

**ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672**  
**6926 HOUSE JUDICIARY**

Cousins knew, or should have known, that it was unreasonably dangerous and also a violation of applicable Coast Guard rules and regulations for Hazelwood to leave the bridge and relinquish control of the navigation of the vessel to Cousins.

76. The Exxon defendants knew, or should have known, based on the service in which the EXXON VALDEZ was involved, that its single hull, high tensile steel construction was not sufficient to allow it to safely engage in the trade for which it was intended.

77. The negligence of the Exxon defendants, except Exxon Pipeline Company, in the operation of the EXXON VALDEZ specifically includes, but is not limited to, (i) failing to man the EXXON VALDEZ with sufficient and competent crew members so that the crew would not be overworked and fatigued; (ii) permitting Captain Hazelwood to command the EXXON VALDEZ despite his excessive use of alcohol; (iii) allowing the improper relinquishment of control of the navigation of the EXXON VALDEZ to Third Mate Cousins; (iv) using single hull, high tensile steel construction that was not sufficient to allow the tanker to safely engage in the trade for which it was intended; (v) failing to reduce speed when ice was encountered; and (vi) failing to establish proper monitoring and supervision of Captain Hazelwood in light of his known alcohol problem.

78. As a direct and proximate result of the foregoing failures by the Exxon defendants, except Exxon Pipeline Company, to exercise the degree of care expected of a

reasonably prudent person acting under the same or similar circumstances, the Exxon defendants in their own right as well as by and through their agents, servants and employees, caused plaintiff to suffer substantial environmental and economic damages in amounts to be proven at trial.

COUNT III

INTENTIONAL AND NEGLIGENT MISREPRESENTATION  
ALL DEFENDANTS

79. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

80. The defendants negligently or intentionally misrepresented to plaintiff and others that they had sufficient personnel, material, knowledge and techniques at their disposal to prevent a major oil spill or to prevent or minimize environmental or other damages if a major oil spill occurred.

81. Contrary to these representations, the defendants were aware, or were negligent or reckless in not being aware, that they lacked sufficient personnel, equipment, knowledge and techniques to prevent an oil spill or to respond adequately to an oil spill on Prince William Sound before it caused substantial environmental and economic damage. Defendants knew and intentionally disregarded, or were reckless in not knowing, that they were ill-equipped and unprepared to respond to an oil spill such as the EXXON VALDEZ spill. Nonetheless, defendants failed to warn state or federal authorities or the public of their unpreparedness and

the potential adverse impact of such unpreparedness should a substantial oil spill occur in Prince William Sound.

82. Due to these negligent, reckless or intentional misrepresentations or omissions of material facts, the true dangers posed to plaintiff, the citizens of Alaska and State lands, waters and resources were not disclosed.

83. The misrepresentations and omissions of material fact by the defendants were negligently, recklessly or intentionally made to induce plaintiff and others to refrain from taking action which would have required defendants to be prepared to prevent a major oil spill and, if an oil spill should occur, to contain and clean up the spilled oil.

84. The above-mentioned misrepresentations and omissions resulted in inadequate and ineffectual clean up efforts which aggravated and compounded the environmental and economic damages caused to plaintiff by the oil spill.

85. As a direct and proximate result of the misrepresentations and/or omissions of material facts by defendants, plaintiff has suffered substantial and continuing environmental and economic damages in amounts to be proven at trial.

COUNT IV

NEGLIGENCE PER SE  
EXXON DEFENDANTS

86. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

87. The acts and omissions of the defendants violated AS 08.62 and regulations enacted pursuant thereto and other state laws and regulations governing the operation of tanker vessels in Prince William Sound. In so violating these laws, defendants were negligent per se.

88. The defendants are liable to plaintiff for all environmental and economic damages resulting from the accident and discharge on account of the violations of the above-mentioned State law.

89. As a direct and proximate result of the defendants' negligent acts and omissions, the defendants have caused plaintiff to suffer substantial and continuing environmental and economic damages in an amount to be proven at trial.

COUNT V

STRICT LIABILITY FOR  
INHERENTLY DANGEROUS ACTIVITY  
EXXON DEFENDANTS

90. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

91. The oil transportation, loading and shipping activities engaged in by the Exxon defendants are so inherently dangerous and potentially devastating to the surrounding environment in the State of Alaska, as well as to its residents, citizens and businesses, that even when conducted under the best of circumstances and with utmost care, such activities constitute inherently and abnormally

dangerous activities for which the defendants are strictly liable.

92. The use of single-hulled vessels for transporting ANS crude oil through Prince William Sound constitutes an inherently and abnormally dangerous activity for which defendants are strictly liable.

93. The above-described inherently dangerous activities engaged in by the defendants directly and proximately caused substantial and continuing environmental and economic damages to plaintiff, in amounts to be proven at trial.

COUNT VI

MARITIME TORT  
EXXON DEFENDANTS

94. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

95. By virtue of the above, the Exxon defendants negligently allowed the vessel to sail in an unseaworthy condition and/or negligently allowed the vessel to be navigated in an unprudent manner, in violation of the general maritime law. The Exxon defendants' negligence resulted in the grounding of the vessel and was a direct and proximate cause of the environmental and economic damages suffered by plaintiff, in amounts to be proven at trial.

LAW OFFICES OF  
PRESTON, THORNTON, ERIS & HOLMAN  
4TH FLOOR  
420 L STREET  
ANCHORAGE, ALASKA 99501-1937  
(907) 276-1966

COUNT VIIBREACH OF RIGHT-OF-WAY LEASE AND INDEMNIFICATION  
OWNER COMPANIES AND ALYESKA

96. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

97. In May, 1974, the State and the defendant Owner Companies or their predecessors in interest entered into the State Right-of-Way Lease. The State Right-Of-Way Lease imposed upon the defendant Owner Companies responsibility for the avoidance of a discharge of oil into or upon the lands, waters and resources of the State, and for the protection of the public and environment from the damages and other effects of any possible oil spill. The Owner Companies' obligations included, without limitation: (i) employment of the best practicable technology available and use of all practicable means to preserve and protect the environment; (ii) prevention of any potential spill of oil or other hazardous substance into or upon the lands, waters and resources of the State; (iii) if such an oil spill occurs, immediate corrective action using the best practicable technology available to abate serious harm or environmental damage; and (iv) restoration of the resources affected by an oil spill.

98. In accordance with State Right-Of-Way Lease, the defendants submitted to the Alaska Department of Natural Resources contingency plans for the prevention, containment and clean up of oil spills, including contingency plans applicable to tanker spills in Prince William Sound.

99. The defendants have breached the State Right-of-Way Lease because they failed to comply with their obligation to use the best practicable technology and resources available to adequately prevent and to abate the serious harm and environmental damage threatened and caused to State lands, waters and resources as a result of the oil spill.

100. The defendants have breached the State Right-of-Way Lease because they failed to fulfill their obligations under the Lease to respond, contain and clean up the oil spill in conformity with the Plan for Prince William Sound.

101. Under Section 13 of the State Right-of-Way Lease, defendant Owner Companies must indemnify the State for liabilities, damages or injury incurred by the State caused by operation or maintenance of the TAPS.

102. Plaintiff has suffered damages and injury within the meaning of Section 13 of the State Right-of-Way Lease in an amount to be proven at trial.

COUNT VIII

PUBLIC NUISANCE  
ALL DEFENDANTS

103. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

104. The acts and omissions of the defendants created a public nuisance through unreasonable interference with the rights of plaintiff to State lands, waters and

resources that are free from pollution and contamination by crude oil and other hazardous substances.

105. The unreasonable interference with the rights of the State resulted in special and distinct harm to plaintiff, including, but not limited to, damages to the lands, waters and resources of the State and the revenues derived from the use by third parties of natural resources of the State.

106. The substantial interference with plaintiff's interests were caused by the actions and omissions of the defendants for which they are liable to plaintiff for environmental and economic damages sustained in amounts to be proven at trial.

107. The defendants threaten to continue the acts and omissions complained of herein, and unless permanently restrained and enjoined, will continue to do so, all to plaintiff's irreparable damage. Plaintiff's remedy at law for damages is not adequate to compensate them for the continuing injuries suffered by the State.

COUNT IX

PRIVATE NUISANCE UNDER AS 09.45.230  
ALL DEFENDANTS

108. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

109. The acts and omissions of the defendants created a private nuisance through substantial interference

with the use and enjoyment of plaintiff's interests in property.

110. The substantial interference with the use and enjoyment of plaintiff's interests in property includes, but is not limited to injury or loss to real and personal property, loss of income, loss of means of producing income and loss of economic benefits.

111. Substantial interference with plaintiff's interests was caused by the actions and omissions of the defendants for which they are liable to plaintiff for the damages sustained in amounts to be proven at trial.

112. The defendants threaten to continue the acts and omissions complained of herein, and unless restrained and enjoined, they will continue to do so, all to plaintiff's irreparable damage. Plaintiff's remedy at law for damages is not adequate to compensate them for the continuing injuries suffered by the State.

COUNT X

TRESPASS  
EXXON DEFENDANTS

113. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

114. Through the intentional or reckless grounding of the EXXON VALDEZ upon Bligh Reef and the improper transport of crude oil, an ultrahazardous activity for which the Exxon defendants are strictly liable, the Exxon defendants spilled approximately 11 million gallons of crude oil into and upon

the State's lands and properties. Such actions constitute an unauthorized and continuing trespass upon State lands, waters and resources.

115. As a direct and proximate result of the EXXON VALDEZ's trespass upon the lands, waters and resources of the State, and continuing trespass of the EXXON VALDEZ crude oil upon State lands, waters and resources, the State has suffered and will continue to suffer substantial and continuing environmental and economic damages for which the Exxon defendants are liable in such amounts as will be proven at trial.

COUNT XI

STRICT LIABILITY UNDER AS 46.03.022  
EXXON DEFENDANTS

116. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

117. Oil, including the approximately 11 million gallons of crude oil which was released as a result of the grounding and rupture of the EXXON VALDEZ's oil tanks, is a hazardous substance, as that term is defined in AS 46.03.826(4)(B) of the Alaska Environmental Conservation Act.

118. The Exxon defendants owned and/or had control over the oil which was released in and on the waters and subsurface lands of Prince William Sound and other areas of the State.

119. The release of oil from the EXXON VALDEZ caused the State to incur response costs.

120. Pursuant to AS 46.03.822, the Exxon defendants are jointly and severally strictly liable to plaintiff for all damages to plaintiff, including, but not limited to, injury or loss to real and personal property, loss of revenue, loss of means of producing income, loss of economic benefits, costs of responding, containing and removing the oil, including the cost of monitoring and overseeing the clean up, and all damages to State lands, waters and resources in amounts to be proven at trial.

COUNT XII

AS 46.03.780 LIABILITY FOR RESTORATION  
ALL DEFENDANTS

121. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

122. All defendants have violated provisions of AS 46.03, AS 46.04 or AS 46.09 and have failed to perform duties imposed by such statutes, which violations have caused, without limitation, injuries and death to fish, animals and vegetation, degradation and other environmental damages to the lands, waters and resources of the State.

123. Pursuant to AS 46.03.780, defendants are liable to plaintiff for an amount equal to the sum of money required to restock injured land and waters, to replenish damaged and degraded resources and to restore the environment to its condition before the injury.

COUNT XIIICIVIL DAMAGES UNDER  
AS 46.03.760(e)  
EXXON DEFENDANTS

124. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

125. The Exxon defendants permitted the discharge of crude oil from the EXXON VALDEZ in violation of AS 46.03.740.

126. Pursuant to AS 46.03.760(e), Exxon defendants are liable to the State for the full amount of damages suffered by the State, including, but not limited to, all direct and indirect costs associated with the abatement, containment and removal of the oil, restoration of the environment to its former condition and all administrative expenses in amounts to be proven at trial.

COUNT XIVCIVIL PENALTIES UNDER AS 46.03.758(b)(1) and (2)  
EXXON DEFENDANTS

127. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

128. Pursuant to AS 46.03.758, Exxon defendants are liable to plaintiff for the penalties in the amounts set forth therein due to the discharge of crude oil from the EXXON VALDEZ and the failure to contain and clean up the discharged oil.

129. The crude oil was discharged from the EXXON VALDEZ because of Exxon defendants' gross negligence. Pursuant to AS 46.03.758(b)(2), the Exxon defendants are

liable to the State for five times the civil penalty established by AS 46.03.758(b)(1) and 18 AAC 75.500 et seq.

130. Following the crude oil discharge from the EXXON VALDEZ, the Exxon defendants failed to take reasonable measures to contain and clean up the discharged oil from the EXXON VALDEZ. Pursuant to AS 46.03.758(b)(2), defendants are liable to the State for five times the civil penalty established by AS 46.03.758(b)(1) and 18 AAC 75.500 et seq.

COUNT XV

AS 46.03.760(a)  
ALL DEFENDANTS

131. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

132. Defendants have violated provisions of AS 46.03 (other than AS 46.03.250-46.03.314, AS 46.03.740 and AS 46.03.758 and provisions of AS 46.04 and AS 46.09 and regulations adopted pursuant to those statutes, including, without limitation, at least the following:

- a) AS 46.03.140
- b) AS 46.03.710
- c) AS 46.04.030
- d) AS 46.09.020

133. Pursuant to AS 46.03.760(a), defendants are liable to plaintiff for a civil assessment of not less than \$500, nor more than \$100,000, for each initial violation, plus not more than \$5,000 for each day thereafter for each violation, and for all other damages and costs incurred by plaintiff.

COUNT XVINEGLIGENT OR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS  
ALL DEFENDANTS

134. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

135. The actions of defendants in discharging crude oil into the waters of Prince William Sound and failing to take adequate measures to contain and clean up the crude oil caused substantial and abnormal environmental and economic damages to the State and its residents. On information and belief, as a result of the actions of the defendants, many state residents are suffering, and will continue to suffer, emotional distress from having witnessed the destruction of the environment in which they live and work and having their livelihoods threatened and their personal and family lives disrupted. As a result of the defendants' acts and omissions, the State has incurred, and will continue to incur, substantial costs in increased demand for social services, mental health treatment and other community services for the severe emotional distress suffered by the citizens of the State.

136. The severe emotional distress suffered by many state residents was a reasonably foreseeable consequence of the grounding of the EXXON VALDEZ and the failure to properly contain and clean up the spilled crude oil.

137. As a direct and proximate result of the defendants' conduct as described above, plaintiff has suffered

substantial and continuing economic and other damages, in an amount to be proven at trial.

COUNT XVII

PUNITIVE DAMAGES  
ALL DEFENDANTS

138. Plaintiff realleges and incorporates herein by reference each and every allegation set forth above.

139. The acts and omissions of defendants alleged in Counts I, II, III, VI, VII, VIII and X were undertaken in deliberate disregard or with reckless indifference to the rights and interests of plaintiff and entitle plaintiff to punitive damages in an amount to be proven at trial.

RELIEF SOUGHT

WHEREFORE, plaintiff prays that this Court:

1. Award all statutorily authorized civil penalties, compensatory, incidental and punitive damages in amounts to be determined by the finder of fact;
2. Award all compensatory and punitive damages authorized under the common law, including, but not limited to, environmental and economic damages.
3. Award all compensatory and punitive damages authorized under the general maritime law.
4. Order that the defendants be permanently enjoined to remove all spilled oil and to restore the surface and subsurface lands, wildlife, waters, fisheries, shellfish and associated marine resources, air and other State lands,

waters and resources affected directly or indirectly by the spill;

5. Order immediate and continuing environmental monitoring and assessment of the conditions of the air, waters and subsurface and surface lands, fisheries, shellfish and the associated marine resources and other natural resources;

6. For a judgment against defendant Owner Companies for all environmental and economic damages suffered by the State of Alaska by reason of the defendants' breaches of the State Right-of-Way Lease, including, without limitation, the cost of monitoring the clean up of the oil spill, the environmental damages to State lands, waters and resources, damage to the State's economy and lost revenues;

7. For a judgment that the defendant Owner Companies are obligated to reimburse and indemnify the State of Alaska for all environmental and economic damages suffered by the State of Alaska by reason of the defendants' breaches of the State Right-of-Way Lease, including, without limitation, the cost of monitoring the clean up of the oil spill, the environmental damages to State lands, waters and resources, the damage to the State's economy, lost revenues, the costs of all enforcement actions and the costs of all expert studies, consultancies and reports conducted or prepared by or for the State to assess the injury or damages caused by defendants' actions and inactions;

8. Award prejudgment interest, attorneys' fees and the costs of this action; and,

9. Award such other and further relief as this Court deems just and proper.

DATED this 15th day of August, 1989.

DOUGLAS B. BAILY  
ATTORNEY GENERAL

By: *Barbara Herman*

Barbara Herman  
Craig Tillery  
Assistant Attorneys General  
State of Alaska

PRESTON, THORGRIMSON,  
ELLIS & HOLMAN  
Attorneys for Plaintiff

By: *Frederick H. Boness*

Frederick H. Boness  
Joseph K. Donohue

LAW OFFICES OF  
PRESTON, THORGRIMSON, ELLIS & HOLMAN  
4TH FLOOR  
420 L STREET  
ANCHORAGE, ALASKA 99501-1837  
(907) 278-1988

An Act

To establish limitations on liability for damages resulting from oil pollution, to establish a fund for the payment of compensation for such damages, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Oil Pollution Act of 1990".

SEC. 2. TABLE OF CONTENTS.

The contents of this Act are as follows:

TITLE I—OIL POLLUTION LIABILITY AND COMPENSATION

- Sec. 1001. Definitions.
- Sec. 1002. Elements of liability.
- Sec. 1003. Defenses to liability.
- Sec. 1004. Limits on liability.
- Sec. 1005. Interest.
- Sec. 1006. Natural resources.
- Sec. 1007. Recovery by foreign claimants.
- Sec. 1008. Recovery by responsible party.
- Sec. 1009. Contribution.
- Sec. 1010. Indemnification agreements.
- Sec. 1011. Consultation on removal actions.
- Sec. 1012. Uses of the Fund.
- Sec. 1013. Claims procedure.
- Sec. 1014. Designation of source and advertisement.
- Sec. 1015. Subrogation.
- Sec. 1016. Financial responsibility.
- Sec. 1017. Litigation, jurisdiction, and venue.
- Sec. 1018. Relationship to other law.
- Sec. 1019. State financial responsibility.
- Sec. 1020. Application.

TITLE II—CONFORMING AMENDMENTS

- Sec. 2001. Intervention on the High Seas Act.
- Sec. 2002. Federal Water Pollution Control Act.
- Sec. 2003. Deepwater Port Act.
- Sec. 2004. Outer Continental Shelf Lands Act Amendments of 1978.

TITLE III—INTERNATIONAL OIL POLLUTION PREVENTION AND REMOVAL

- Sec. 3001. Sense of Congress regarding participation in international regime.
- Sec. 3002. United States-Canada Great Lakes oil spill cooperation.
- Sec. 3003. United States-Canada Lake Champlain oil spill cooperation.
- Sec. 3004. International inventory of removal equipment and personnel.
- Sec. 3005. Negotiations with Canada concerning tug escorts in Puget Sound.

TITLE IV—PREVENTION AND REMOVAL

Subtitle A—Prevention

- Sec. 4101. Review of alcohol and drug abuse and other matters in issuing licenses, certificates of registry, and merchant mariners' documents.
- Sec. 4102. Term of licenses, certificates of registry, and merchant mariners' documents; criminal record reviews in renewals.
- Sec. 4103. Suspension and revocation of licenses, certificates of registry, and merchant mariners' documents for alcohol and drug abuse.

- Sec. 4104. Removal of number of individuals in charge.
- Sec. 4105. Access to National Driver Register.
- Sec. 4106. Manning standards for foreign tank vessels.
- Sec. 4107. Vessel traffic service systems.
- Sec. 4108. Great Lakes pilotage.
- Sec. 4109. Periodic gauging of plating thickness of commercial vessels.
- Sec. 4110. Overflow and tank level or pressure monitoring devices.
- Sec. 4111. Study on tanker navigation safety standards.
- Sec. 4112. Dredge modification study.
- Sec. 4113. Use of liners.
- Sec. 4114. Tank vessel manning.
- Sec. 4115. Establishment of double hull requirement for tank vessels.
- Sec. 4116. Pilotage.
- Sec. 4117. Maritime pollution prevention training program study.
- Sec. 4118. Vessel communication equipment regulations.

Subtitle B—Removal

- Sec. 4201. Federal removal authority.
- Sec. 4202. National planning and response system.
- Sec. 4203. Coast Guard vessel design.
- Sec. 4204. Determination of harmful quantities of oil and hazardous substances.
- Sec. 4205. Coastwise oil spill response endorsements.

Subtitle C—Penalties and Miscellaneous

- Sec. 4301. Federal Water Pollution Control Act penalties.
- Sec. 4302. Other penalties.
- Sec. 4303. Financial responsibility civil penalties.
- Sec. 4304. Deposit of certain penalties into oil spill liability trust fund.
- Sec. 4305. Inspection and entry.
- Sec. 4306. Civil enforcement under Federal Water Pollution Control Act.

TITLE V—PRINCE WILLIAM SOUND PROVISIONS

- Sec. 5001. Oil spill recovery institute.
- Sec. 5002. Terminal and tanker overnight and monitoring.
- Sec. 5003. Bligh Reef light.
- Sec. 5004. Vessel traffic service system.
- Sec. 5005. Equipment and personnel requirements under tank vessel and facility response plans.
- Sec. 5006. Funding.
- Sec. 5007. Limitation.

TITLE VI—MISCELLANEOUS

- Sec. 6001. Savings provisions.
- Sec. 6002. Annual appropriations.
- Sec. 6003. Outer Banks protection.
- Sec. 6004. Cooperative development of common hydrocarbon-bearing areas.

TITLE VII—OIL POLLUTION RESEARCH AND DEVELOPMENT PROGRAM

- Sec. 7001. Oil pollution research and development program.

TITLE VIII—TRANS-ALASKA PIPELINE SYSTEM

- Sec. 8001. Short title.

Subtitle A—Improvements to Trans-Alaska Pipeline System

- Sec. 8101. Liability within the State of Alaska and cleanup efforts.
- Sec. 8102. Trans-Alaska Pipeline Liability Fund.
- Sec. 8103. Presidential task force.

Subtitle B—Penalties

- Sec. 8201. Authority of the Secretary of the Interior to impose penalties on Outer Continental Shelf facilities.
- Sec. 8202. Trans-Alaska pipeline system civil penalties.

Subtitle C—Provisions Applicable to Alaska Natives

- Sec. 8301. Land conveyances.
- Sec. 8302. Impact of potential spills in the Arctic Ocean on Alaska Natives.

State due to injury, destruction, or loss of real property, personal property, or natural resources, or diminished economic activity due to a discharge of oil; and

"(B) the net cost of providing increased or additional public services during or after removal activities due to a discharge of oil, including protection from fire, safety, or health hazards, incurred by a State or political subdivision of a State.

"(14) Paragraphs (1) through (13) shall apply only to claims arising from incidents occurring before the date of enactment of the Trans-Alaska Pipeline System Reform Act of 1990. The Oil Pollution Act of 1990 shall apply to any incident, or any claims arising from an incident, occurring on or after the date of the enactment of that Act."

(d) PAYMENT OF CLAIMS BY FUND.—Section 204(c)(3) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)(3)) is amended by adding at the end the following: "The Fund shall expeditiously pay claims under this subsection, including such \$14,000,000, if the owner or operator of a vessel has not paid any such claim within 90 days after such claim has been submitted to such owner or operator. Upon payment of any such claim, the Fund shall be subrogated under applicable State and Federal laws to all rights of any person entitled to recover under this subsection. In any action brought by the Fund against an owner or operator or an affiliate thereof to recover amounts under this paragraph, the Fund shall be entitled to recover prejudgment interest, costs, reasonable attorney's fees, and, in the discretion of the court, penalties."

(e) OFFICERS AND TRUSTEES.—Section 204(c)(4) of the Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1653(c)(4)) is amended—

(1) by inserting "(A)" after "(4)"; and

(2) by adding at the end the following:

"(B) No present or former officer or trustee of the Fund shall be subject to any liability incurred by the Fund or by the present or former officers or trustees of the Fund, other than liability for gross negligence or willful misconduct.

"(C)(i) Subject to clause (ii), each officer and each trustee of the Fund—

"(I) shall be indemnified against all claims and liabilities to which he or she has or shall become subject by reason of serving or having served as an officer or trustee, or by reason of any action taken, omitted, or neglected by him or her as an officer or trustee; and

"(II) shall be reimbursed for all attorney's fees reasonably incurred in connection with any claim or liability.

"(ii) No officer or trustee shall be indemnified against, or be reimbursed for, any expenses incurred in connection with, any claim or liability arising out of his or her gross negligence or willful misconduct."

#### SEC. 3103. PRESIDENTIAL TASK FORCE.

##### (a) ESTABLISHMENT OF TASK FORCE.—

(1) ESTABLISHMENT AND MEMBERS.—(A) There is hereby established a Presidential Task Force on the Trans-Alaska Pipeline System (hereinafter referred to as the "Task Force") composed of the following members appointed by the President:

(i) Three members, one of whom shall be nominated by the Secretary of the Interior, one by the Administrator of

the Environmental Protection Agency, Department of  
return of Transportation.

(ii) Three members nominated by the Governor of the State of Alaska, one of whom shall be an employee of the Alaska Department of Natural Resources and one of whom shall be an employee of the Alaska Department of Environmental Conservation.

(iii) One member nominated by the Office of Technology Assessment.

(B) Any member appointed to fill a vacancy occurring before the expiration of the term for which his or her predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his or her term until a successor, if applicable, has taken office.

(2) COCHAIRMEN.—The President shall appoint a Federal cochairman from among the Federal members of the Task Force appointed pursuant to paragraph (1)(A) and the Governor shall designate a State cochairman from among the State members of the Task Force appointed pursuant to paragraph (1)(B).

(3) COMPENSATION.—Members shall, to the extent approved in appropriations Acts, receive the daily equivalent of the minimum annual rate of basic pay in effect for grade GS-15 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Task Force, except that members who are State, Federal, or other governmental employees shall receive no compensation under this paragraph in addition to the salaries they receive as such employees.

(4) STAFF.—The cochairman of the Task Force shall appoint a Director to carry out administrative duties. The Director may hire such staff and incur such expenses on behalf of the Task Force for which funds are available.

(5) RULE.—Employees of the Task Force shall not, by reason of such employment, be considered to be employees of the Federal Government for any purpose.

(b) DUTIES OF THE TASK FORCE.—

(1) AUDIT.—The Task Force shall conduct an audit of the Trans-Alaska Pipeline System (hereinafter referred to as "TAPS") including the terminal at Valdez, Alaska, and other related onshore facilities, make recommendations to the President, the Congress, and the Governor of Alaska.

(2) COMPREHENSIVE REVIEW.—As part of such audit, the Task Force shall conduct a comprehensive review of the TAPS in order to specifically advise the President, the Congress, and the Governor of Alaska concerning whether—

(A) the holding of the Federal and State right-of-way is, and has been, in full compliance with applicable laws, regulations, and agreements;

(B) the laws, regulations, and agreements are sufficient to prevent the release of oil from TAPS and prevent other damage or degradation to the environment and public health;

(C) improvements are necessary to TAPS to prevent release of oil from TAPS and to prevent other damage or degradation to the environment and public health;

(D) improvements are necessary in the onshore oil spill response capabilities for the TAPS; and

(3) CONSULTANTS.—(A) The Task Force shall retain at least one independent consulting firm with technical expertise in engineering, transportation, safety, the environment, and other applicable areas to assist the Task Force in carrying out this subsection.

(B) Contracts with any such firm shall be entered into on a nationally competitive basis, and the Task Force shall not select any firm with respect to which there may be a conflict of interest in assisting the Task Force in carrying out the audit and review. All work performed by such firm shall be under the direct and immediate supervision of a registered engineer.

(4) PUBLIC COMMENT.—The Task Force shall provide an opportunity for public comment on its activities including at a minimum the following:

(A) Before it begins its audit and review, the Task Force shall review reports prepared by other Government entities conducting reviews of TAPS and shall consult with those Government entities that are conducting ongoing investigations including the General Accounting Office. It shall also hold at least 2 public hearings, at least 1 of which shall be held in a community affected by the Exxon Valdez oil spill. Members of the public shall be given an opportunity to present both oral and written testimony.

(B) The Task Force shall provide a mechanism for the confidential receipt of information concerning TAPS, which may include a designated telephone hotline.

(5) TASK FORCE REPORT.—The Task Force shall publish a draft report which it shall make available to the public. The public will have at least 30 days to provide comments on the draft report. Based on its draft report and the public comments thereon, the Task Force shall prepare a final report which shall include its findings, conclusions, and recommendations made as a result of carrying out such audit. The Task Force shall transmit (and make available to the public), no later than 2 years after the date on which funding is made available under paragraph (7), its final report to the President, the Congress, and the Governor of Alaska.

(6) PRESIDENTIAL REPORT.—The President shall, within 90 days after receiving the Task Force's report, transmit a report to the Congress and the Governor of Alaska outlining what measures have been taken or will be taken to implement the Task Force's recommendations. The President's report shall include recommended changes, if any, in Federal and State law to enhance the safety and operation of TAPS.

(7) EARMARK.—Of amounts in the Fund, \$5,000,000 shall be available, subject to appropriations, annually without fiscal year limitation to carry out the requirements of this section.

(c) GENERAL ADMINISTRATION AND POWERS OF THE TASK FORCE.—

(1) AUDIT ACCESS.—The Comptroller General of the United States, and any of his or her duly appointed representatives, shall have access, for purposes of audit and examination, to any books, documents, papers, and records of the Task Force that are pertinent to the funds received and expended by the Task Force.

Contracts.

Classified  
information

(2) **TERMINATION.**—The Task Force shall cease to exist on the date on which the final report is provided pursuant to subsection (b)(6).

(3) **FUNCTIONS LIMITATION.**—With respect to safety, operations, and other matters related to the pipeline facilities (as such term is defined in section 202(4) of the Hazardous Liquid Pipeline Safety Act of 1979) of the TAPS, the Task Force shall not perform any functions which are the responsibility of the Secretary of Transportation under the Hazardous Liquid Pipeline Safety Act of 1979, as amended. The Secretary may use the information gathered by and reports issued by the Task Force in carrying out the Secretary's responsibilities under that Act.

(4) **POWERS.**—The Task Force may, to the extent necessary to carry out its responsibilities, conduct investigations, make reports, issue subpoenas, require the production of relevant documents and records, take depositions, and conduct directly or, by contract, or otherwise, research, testing, and demonstration activities.

(5) **EXAMINATION OF RECORDS AND PROPERTIES.**—The Task Force, and the employees and agents it so designates, are authorized, upon presenting appropriate credentials to the person in charge, to enter upon, inspect, and examine, at reasonable times and in a reasonable manner, the records and properties of persons to the extent such records and properties are relevant to determining whether such persons have acted or are acting in compliance with applicable laws and agreements.

(6) **FOIA.**—The information gathered by the Task Force pursuant to subsection (b) shall not be subject to section 552 of title 5, United States Code (commonly referred to as the "Freedom of Information Act"), until its final report is issued pursuant to subsection (b)(6).

## Subtitle B—Penalties

### SEC. 8201. AUTHORITY OF THE SECRETARY OF THE INTERIOR TO IMPOSE PENALTIES ON OUTER CONTINENTAL SHELF FACILITIES.

Section 24(b) of the Outer Continental Shelf Lands Act (43 U.S.C. 1350(b)) is amended—

(1) by striking out "If any" and inserting in lieu thereof "(1) Except as provided in paragraph (2), if any";

(2) by striking out "\$10,000" and inserting in lieu thereof "\$20,000";

(3) by adding at the end of paragraph (1) the following new sentence: "The Secretary shall, by regulation at least every 3 years, adjust the penalty specified in this paragraph to reflect any increases in the Consumer Price Index (all items, United States city average) as prepared by the Department of Labor."; and

(4) by adding at the end the following new paragraph:

"(2) If a failure described in paragraph (1) constitutes or constituted a threat of serious, irreparable, or immediate harm or damage to life (including fish and other aquatic life), property, any mineral deposit, or the marine, coastal, or human environment, a civil penalty may be assessed without regard to the requirement of expiration of a period allowed for corrective action."

### SEC. 8202. TRANS-ALASKA PIPELINE SYSTEM CIVIL PENALTIES.

The Trans-Alaska Pipeline Authorization Act (43 U.S.C. 1651 et seq.) is amended by adding at the end thereof the following new section:

#### "CIVIL PENALTIES

"SEC. 207. (a) **PENALTY.**—Except as provided in subsection (c)(4), the Secretary of the Interior may assess and collect a civil penalty under this section with respect to any discharge of oil—

"(1) in transit from fields or reservoirs supplying oil to the trans-Alaska pipeline; or

"(2) during transportation through the trans-Alaska pipeline or handling at the terminal facilities, that causes damage to, or threatens to damage, natural resources or public or private property.

"(b) **PERSONS LIABLE.**—In addition to the person causing or permitting the discharge, the owner or owners of the oil at the time the discharge occurs shall be jointly, severally, and strictly liable for the full amount of penalties assessed pursuant to this section, except that the United States and the several States, and political subdivisions thereof, shall not be liable under this section.

"(c) **AMOUNT.**—(1) The amount of the civil penalty shall not exceed \$1,000 per barrel of oil discharged.

"(2) In determining the amount of civil penalty under this section, the Secretary shall consider the seriousness of the damages from the discharge, the cause of the discharge, any history of prior violations of applicable rules and laws, and the degree of success of any efforts by the violator to minimize or mitigate the effects of such discharge.

"(3) The Secretary may reduce or waive the penalty imposed under this section if the discharge was solely caused by an act of war, act of God, or third party action beyond the control of the persons liable under this section.

"(4) No civil penalty assessed by the Secretary pursuant to this section shall be in addition to a penalty assessed pursuant to section 311(b) of the Federal Water Pollution Control Act (33 U.S.C. 1321(b)).

"(d) **PROCEDURES.**—A civil penalty may be assessed and collected under this section only after notice and opportunity for a hearing on the record in accordance with section 554 of title 5, United States Code. In any proceeding for the assessment of a civil penalty under this section, the Secretary may issue subpoenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents and may promulgate rules for discovery procedures. Any person who requested a hearing with respect to a civil penalty under this subsection and who is aggrieved by an order assessing the civil penalty may file a petition for judicial review of such order with the United States Court of Appeals for the District of Columbia circuit or for any other circuit in which such person resides or transacts business. Such a petition may only be filed within the 30-day period beginning on the date the order making such assessment was issued.

"(e) **STATE LAW.**—(1) Nothing in this section shall be construed or interpreted as preempting any State or political subdivision thereof from imposing any additional liability or requirements with respect to the discharge, or threat of discharge, of oil or other pollution by oil.

# Long-Term Damage Seen From Exxon Valdez Spill

## Recovery of Some Wildlife May Take Decades

By John Lancaster  
Washington Post Staff Writer

Nearly two years after the grounded tanker Exxon Valdez dumped 10.9 million gallons of crude oil into Alaska's Prince William Sound, scientific studies have found new evidence of long-term damage to certain varieties of seabirds, salmon, trout and other marine life.

Although in some respects the sound has proved surprisingly resilient, the available body of scientific evidence, including confidential government documents obtained by The Washington Post, challenges the increasingly widespread assumption that the oil spill was a

transitory event whose worst effects were cosmetic.

Federal scientists have concluded, for example, that some colonies of murrelets, diving birds common to the North Pacific, have suffered a "total failure" to reproduce as a consequence of the spill, amounting to a loss of "several hundred thousand" chicks, according to sources. Federal scientists estimate that some seabird colonies may require up to 70 years to recover.

Another study suggests that oil may have reduced the populations of rockfish, herring, shrimp, mussels and clams, among other marine organisms, presenting "a considerable risk that some of the species

See VALDEZ, A7, Col 1

*Bush administration plans \$1 billion cleanup of toxic lead. Page A8*

may not respond to conventional management actions for decades."

The question of long-term damage to Prince William Sound has taken on renewed importance in light of recent discussions among Exxon and state and federal negotiators on a possible settlement of damage claims stemming from the spill.

Alaska's new governor, Walter J. Hickel (D), has expressed a desire to settle the case for about \$1.2 billion, money that would be placed in trust to help pay for further research and restoration programs in the sound. But environmentalists have raised questions about the proposal given the many unanswered questions about the spill's long-term effects.

"I think there's been a tendency in the public and in the media to think that Exxon Valdez is an old story and it was overblown, and the data suggests that is not really the case," said Erik Olson, an attorney for the National Wildlife Federation. "We are very concerned about the potential of the settlement to fail to account for long-term damage."

An Exxon spokesman declined to comment on the studies.

In general, federal and state agencies investigating the spill have refused to release their findings, saying that the data will be used as evidence against Exxon if the case goes to trial as scheduled in April. But some information has appeared in scientific journals and elsewhere. In addition, official summaries of some key studies were made available to The Post by an individual who asked not to be identified.

State and federal officials cautioned that the summaries—submitted by government scientists seeking funds for "restoration projects" in the sound—may overstate the extent of the damage, and that many of the data are preliminary. Moreover, several noted that some of the news is good, such as the apparent recovery of the sound's vibrant commercial salmon fishery.

"The worst nightmares in terms of salmon resources did not occur ... and that's definitely good news," said Alex Wertheimer, a fisheries biologist for the National Marine Fisheries Service. "[But] that's different from saying there is no effect."

Government officials, speaking on condition that they not be iden-

# New Evidence Points to Long-Term Wildlife Damage From Exxon Valdez Spill

tified, said they were particularly concerned about the spill's effect on murre. While most of the birds escaped harm, about 150,000 perished as a direct result of the spill along a 400-mile stretch of the Gulf of Alaska, according to official estimates.

Even more troubling, sources said, was the apparent failure of murre colonies in the spill area to bear young in the years following the accident. "We've seen two years in a row of this total failure," said a source who asked not to be identified. "It's wrong to say we lost all the murre in Alaska (but) . . . certain areas are greatly impacted."

Scientists speculate that the murre, long-lived birds that produce only one egg per year, are not

bearing young because of a shortage of mature adults to help defend the colonies against predators. Sources estimated that if not for the spill, between 200,000 and 300,000 murre chicks would have been born over the last two years.

Scientists have tended to be more cautious in evaluating the spill's effects on fish, but studies indicate there is reason for concern. For example, according to a restoration proposal by marine scientists in the Alaska Department of Fish and Game, "several species of marine fin fish and shell fish may have been damaged by the Exxon Valdez oil spill."

Another restoration proposal by the state agency cited evidence that "populations of Dolly Varden [trout]

have demonstrated signs of exposure to oil. Certain populations in impacted areas may have been reduced by this exposure." A government official described the study of the trout, which are popular with sport fishermen, as "very understated."

But government officials cautioned against drawing too many conclusions from the documents. "What you've got are preliminary documents," one said. "They're doing the best they can on short deadlines with not enough time to do the analysis."

The official expressed concern, however, that possible "sublethal" effects—such as tumors, low body weight and reproductive difficulties—might escape detection

through conventional methods. "I'm not sure how we're going to pick that up in the monitoring," the official said.

In one of the few public disclosures stemming from their inquiries, federal scientists reported last spring that they had found hydrocarbon derivatives of oil in the gallbladders of pollock up to 600 miles from the site of the spill a year after it occurred. Although no fishing or eating restrictions were imposed as a result, scientists said the presence of the contaminants in a deep-water fish so far from the spill indicated that oil had entered the food chain.

Similarly, according to a document prepared by the fisheries service, researchers have discovered

enzymes in salmon associated with the ingestion of oil. "It means the oil got into their food . . . [which] suggests a different and perhaps longer-lasting mechanism of contamination," a government official said.

Another document prepared last September by the same agency cautions that "the record returns to the sound [of pink salmon] do not by any means preclude actual or documentable damage to the resource."

The memo said, however, that last year's large catch is "clear evidence that there was no catastrophic impact" and that "long-term effects will be localized to particular stream systems or littoral areas that were directly and severely impacted by the spill."

Att. Jay Nelson Hi 907-965-2487  
Rep. Cliff Davidson FAX: 907-965-98515

# Alaskans fear 'sellout' in oil spill settlement

By William P. Coughlin  
GLOBE STAFF

Opposition to Alaska's reported settlement with the Exxon Corp. for the Exxon Valdez oil spill continued yesterday, with a growing number of lawmakers and native Alaskans expressing fears that the deal may be what some called a "sellout."

Meanwhile, there were signs that the negotiations were not going entirely smoothly.

Gov. Walter Hickel is scheduled to join the state's key negotiator, Attorney General Charles Cole, tomorrow in Washington to sign the settlement, sources said. But, "things may have started to go sideways. Cole has been recalled to brief the governor . . . everyone is surprised Cole's being called back," a source said.

"The meeting where things started to go sour was with NOAA," the source said, referring to the National Oceanic and Atmospheric Administration. He indicated that the federal agency had unresolved environmental concerns about the deal.

USA has been completing what is reported to be a \$1 billion settlement to be paid by Exxon in installments over 11 years, and from which the company can deduct millions in cleanup costs already spent. Sources say that the \$1 billion deal amounts to about \$550 million in real dollars over the years.

Hickel, a former Interior secretary, told The Alaska Daily News this week that "it's a

good settlement." However, he declined to reveal details "until after the signing."

The secrecy is worrying Alaskans, whose shores were fouled by the largest spill in American waters. It also has stirred the Legislature, whose members are angered by Hickel's lack of consultation with them.

Rep. Cliff Davidson of Kodiak, chairman of the House Resources Committee, whose native island 1,000 miles from the Valdez spill was damaged, said, "This is going down without the Legislature knowing anything."

"There was total cancellation of livelihoods on my island, and while some have been compensated, a lot of people have fallen through the cracks," he said.

Davidson also said that Alaskans "have not yet completed assessment of damages. . . I wouldn't say the governor is selling us short, but is he getting enough for those hurt and to restore the damage?"

Leaders at the Chenega, English Bay and Point Graham native villages said they will try to block the pact "if we are sold out."

Some village shores are still covered by oil "up to 9 feet thick," said Charles Totemoff of Chenega Corp. "This deal involves our lives and lands, but no one has talked to us. They can't do this deal without us."

Robert Kvasnickoff, chairman of English Bay Corp. at Kona Fjord National Park, said, "We were victims of Exxon's oil; we won't be victims of Exxon's secret deal; we won't be sold out by the government."

## Access drug

and had lower blood pressure. It would have caused them to have a heart attack.

Released yesterday, the drug is often based on the work of men who are not likely to receive the drug.

by researchers at Brown University. J. Wachtel and Dr. . . on 880 AIDS patients. It found that it is more likely than women that patients with heart disease are likely to be offered hormone therapy with the drug free.

Costs of getting the drug are less than for a non-drug user was less than for a patient with heart disease.

was published in the Journal of Internal Medicine.

WALMART HOLIDAY HOURS SAT. 9-9, SUN. 10-7, MON. 9-9



# Anger greets reported pact on spill fund

## Critics: Plan easy on Exxon

By BRIAN S. AKRE  
The Associated Press

**JUNEAU** — Environmentalists, fishermen, lawmakers and other Alaskans reacted with outrage Thursday to published reports that the state may let Exxon Corp. take 10 years to pay a proposed \$1 billion settlement of the Exxon Valdez oil-spill litigation.

The Boston Globe, quoting unnamed sources, said the oil giant's settlement would be tax-deductible. Exxon initially would pay the state \$200 million, followed by payments of \$160 million the second year and \$80 million a year for eight years.

The money would go into a fund that would be used to restore Prince William Sound, the waterway polluted in the nation's largest oil spill.

Harry Gamble, a spokesman for Gov. Walter Hickel, declined to comment on the reports. Exxon and federal officials also declined to comment.

Critics say the installment plan, because of inflation, would net the state far less money in real terms than the \$1 billion reportedly being sought by Hickel.

"The installment plan to-



■ **NO DEAL:** Cook Inlet oil companies and a local citizens council failed Thursday to meet a congressional deadline for an agreement on oil-spill planning. E-2

tally shortchanges Alaskans," said Riki Ott, a commercial fisherman and leader of the Oil Reform Alliance, a group formed after the spill to lobby for changes in oil industry practices.

"In real terms it's about half of Hickel's proposed \$1 billion settlement. And we don't even know what we're settling on."

State Rep. Cliff Davidson, D-Kodiak, agreed.

"If you look at the bottom line for that company over this past year, it seems like they could afford a little more," he said.

The proposed tax deduction for Exxon was equally unpopular.

"Exxon was the polluter.

Please see Page E-3, SPILL.

... downtown on the bus with  
Cw has been watched over and analyzed by special-edu- him. But the second day, he

# SPILL: Anger greets pact

Continued from Page E-1

If they're allowed to deduct their expenses from their immense profits, it doesn't really come out of their hide," said Mike Wenig, an attorney for Trustees for Alaska, an environmental law firm.

Alaska Attorney General Charlie Cole left Washington on Thursday after negotiating with Exxon and federal officials. He was to arrive today in Juneau to brief Hickel and state lawmakers.

Hickel said Wednesday that he expected a settlement within a week. He said details will not be released until he signs the pact.

The governor last month proposed settling the lawsuits and the criminal case for about \$1.2 billion. Much of the money would be used to buy private timberlands that would be part of a marine conservation area in the sound.

The tanker Exxon Valdez spilled nearly 11 million gallons of North Slope crude oil into the sound when it ran aground on March 24, 1989.

The state sued Exxon for unspecified civil damages resulting from the spill. The federal government is prosecuting Exxon on criminal charges, with trial set for April 10 in Anchorage.

Most of the criticism of the settlement talks in Alas-

ka has focused on Hickel.

Ott accused Hickel of rushing to get the litigation settled so he can focus Alaska's attention on several major development projects, including proposed oil drilling in the Arctic National Wildlife Refuge and construction of an \$11 billion natural gas pipeline across the state.

State legislators complained that they were being kept in the dark about the negotiations.

Davidson said he is learning more about the talks from Eastern newspapers than he is from the governor's office.

"I just wonder, are we doing everything we can do to protect the people's interests here?"

Rep. Max Gruenberg, D-Anchorage and vice-chairman of the House Judiciary Committee, unveiled a bill Thursday that would require legislative approval of any spill settlement.

A group of Native leaders who represent villages affected by the spill issued a news release condemning the closed-door talks.

Robert Kvasnikoff, chairman of English Bay Corp., a Native village corporation, said the villages "were victims of Exxon's oil. We won't be victims of Exxon's secret deal. We won't be sold out by the government."

en get class-action voice in court

3 of 6

## Spill deal could keep damage figure secret

By DAVID POSTMAN  
Daily News reporter

JUNEAU — Federal and state studies putting a dollar value on damage from the Exxon Valdez oil spill would be kept secret under a proposed settlement of the state's lawsuit against Exxon. Environmentalists, fishermen and lawmakers said that would keep the public from finding out if the state got a good deal.

According to Attorney General Charles Cole's latest public briefing on the subject, the settlement proposal with Exxon would allow for the release of scientific data but not the in-depth studies of the economic damage from the 1989 spill.

---

■ SPILL: State risks lawsuit if case settled. C-8

---

Earlier this month, Cole told reporters "there would be no reason" to release the economic information once the case was dropped. He told the legislature's House Judiciary Committee that since the studies are incomplete, it would be misleading to make them public.

Nonetheless, Gov. Wally Hickel has used the settlement with Exxon to justify his proposed \$600 million settlement with Exxon, saying the studies put the damages at \$600 million.

Please see Back Page, SPILL

## SPILL: Settlement plan to withhold studies

Continued from Page A-1

Cole could not be reached Tuesday. He is expected to brief the legislature today on the month-old negotiations over settling the state's civil suit against Exxon.

The state and federal governments are spending millions of dollars to try to put a price on the damage done to Prince William Sound and the Gulf of Alaska. The information was to be used if the government lawsuits went to trial and a jury had to decide how much Exxon should pay for the spill.

The state and federal studies are separate and the two teams have not shared any information, according

to Norman Meade, chief economist with the National Oceanic and Atmospheric Administration's Damage Assessment and Restoration Center in Maryland.

"We don't have any hard numbers yet," said Meade. He would not comment further except to say the studies are not complete.

The economic damage is being figured through a new and controversial method called contingent valuation, which uses surveys to put a price on resource values that can't be bought or sold, such as the enjoyment of nature or the desire to pass it on to future generations. The surveys ask people how much the lost resources are worth to them, and their

answers are used to decide how much a polluter must pay for the damages.

The method, although embedded in federal law, has never been used in a trial like the one anticipated for the Exxon Valdez case.

The proposal to keep the economic data secret was criticized Tuesday as a way of stopping the public from finding out how good a deal the state made with Exxon.

"All we've been hearing is, 'Trust us.' 'Trust us' is the attitude that got us into this problem," said Riki Ott, a commercial fisherman and marine toxicologist. She is a founder of the Oil Reform Alliance, which pushes for stronger environmental laws.

## on Exxon oil damage draws criticism

"If they want us to trust them, they have to tell us all," she said.

Bob Adler, a senior attorney with the Washington-based Natural Resources Defense Council, said the studies should be considered public information. The group is one of many environmental organizations suing Exxon over the spill.

"It's a fundamental right-to-know issue," he said. "These studies were done with public dollars. Public resources were destroyed or damaged by the spill, and the public has a right to know the results of those studies."

Rep. Mike Navarre, D-Kanal, has introduced two resolutions in the House calling

on state and federal officials to make the information public.

"Maybe they have good reasons for keeping it secret, maybe it would do more harm than good, but they need to tell us why," Navarre said.

The lawyer coordinating the hundreds of civil suits against Exxon said the scientific data, which Cole said would be public, is most important for the private plaintiffs.

But, attorney Lloyd Miller said, the Native village residents he represents in a class-action suit could be hurt if the economic studies are kept secret because "their claims are very closely aligned with the natural

resource damage claims of the state and federal government."

University of Alaska biologist Rick Steiner, on leave while he works on spill-related issues, said the studies are likely to have a much larger dollar figure than the \$1.2 billion that Mickel wants from Exxon. But he said that doesn't mean the state is getting a bad deal.

"Everybody has to give up something in a settlement," he said from Cordova. "If we have to settle for a lesser amount of money than we might have gotten 10 years down the line if we had gone to trial, that does not necessarily mean that a \$1.2 billion settlement is a bad deal."

Date: Feb. 27 1991

## State faces lawsuits after spill deal

By DAVID POSTMAN  
Daily News reporter

**JUNEAU** — If Alaska settles its case against Exxon it would be breaking a deal with Hebermen and Native groups and find itself a target of a new set of lawsuits, according to an attorney representing clients suing Exxon.

Immediately after the March 24, 1989, oil spill, several lawsuits were filed naming both Exxon and the state, claiming the government's weak oversight of the industry was partly to blame for the wreck of the Exxon Valdez.

But when the state filed its civil suit against Exxon, then-Attorney General Doug



Bally convinced the parties to drop the state from their suits.

"The state approached those private plaintiffs and persuaded them that at that time it was wiser to withdraw the litigation against the state and join arms against Exxon," said Lloyd Miller, an Anchorage attorney representing a class action suit brought by Natives against Exxon. Miller is also the liaison council for the more than 300 private suits pending against Exxon in

state and federal court.

But if the state drops its suit it would no longer cooperate with the other plaintiffs on collecting evidence and other trial preparation. Miller said the private plaintiffs, and others, may then sue the state, "depending on their assessment of the settlement."

"There's no way of knowing to what extent the plaintiffs will elect to sue the state," he said.

Attorney General Charles Cole has said he is aware that the suits were dropped against the state but has refused to say if he thinks a settlement with Exxon will bring new lawsuits.

David Oesting, an attorney with clients suing

Exxon, said last week that the private plaintiffs withdrew their suits against the state after deciding "our common interest in sticking it to these defendants outweighs any benefit of suing the state."

But it is a "relatively unquiet truce that exists and I don't know any reason why we wouldn't reopen those claims against the state if I thought from a strategic point ... it would help get information we need."

But Oesting said he isn't sure anyone would sue the state because, for the hundreds of private plaintiffs, it would create "one more division of opposing troops."

SECTION

D

WEDNESDAY

FEBRUARY 20, 1991 CCF

Los Angeles Times

MARKETS / MONEY / PERSONAL FINANCE

# BUSINESS

## Toxics Disposal Probe Targets Exxon, Arco, BP

By PATRICK LEE  
TIMES STAFF WRITER

Federal and state officials are investigating allegations that Exxon Corp. illegally shipped hazardous wastes in the ballast water of its oil tankers to a treatment plant in Alaska, stirring up a hornet's nest among legislators and imperiling talks to settle lawsuits arising from the 1989 Alaskan oil spill.

Exxon denies wrongdoing.

Meanwhile, Atlantic Richfield Co. and British Petroleum, which both have major tanker operations along the West Coast, confirmed that they have transferred oily ballast water and so-called tank washings from one tanker to another to be shipped for disposal through the plant into Valdez Harbor.

Spokesmen for Arco and BP both denied that the transhipped liquid contains anything other than water, crude oil and tiny amounts of cleaning solvents. They said it certainly does not contain large amounts of chemical or hazardous wastes whose disposal in Alaska would violate federal guidelines.

Please see PROBE, D14

D14 |

WEDNESDAY, FEBRUARY 20, 1991 \*

# PROBE: Oil Firms Are Targeted in Toxics

Continued from D1

But, Environmental Protection Agency officials say a question remains whether shipments of such waste water violate the terms of a permit issued by the EPA to the Alyeska Pipeline Service Co. to operate the treatment plant.

Harold Geren, chief of water permits and compliance in the EPA's Seattle regional office, said he was trying to determine whether the Arco or BP transfers would violate the permit. He also said the agency was investigating the allegations that Exxon had illegally used the plant to dispose of hazardous wastes.

"I'm finding out a lot about practices that I didn't know about, and the first question that runs through my mind is: Why didn't we know about this when we granted this permit?" Geren said. "It's become very clear to us we need to find out what common practice is."

The Exxon allegations threaten to throw a monkey wrench into negotiations between Exxon and state and federal officials seeking to settle civil litigation arising from the March, 1989, oil spill from the Exxon Valdez, according to lawyers familiar with the talks. Such a settlement had been expected as soon as this week.

Alaska Atty. Gen. Charles E. Cole was en route to Washington on Tuesday to confer with Exxon attorneys on the proposed settlement, which reportedly could in-

clude a \$1.2-billion payment by Exxon. Gov. Walter J. Hickel was planning a visit to Washington to attend the unveiling of President Bush's new energy policy today. A spokesman would not say whether Hickel might take part in the Exxon talks as well.

Notwithstanding the new allegations, state officials remained optimistic that a settlement will be reached. "I am not aware of any effect this [news of the waste-water shipment] may have," Alaska Deputy Atty. Gen. Douglas L. Blankenship said. "It's an ongoing negotiation process."

In a letter sent last week to U.S. Atty. Gen. Richard L. Thornburgh and EPA Administrator William K. Reilly, former oil tanker broker Charles Hamel alleged that Exxon has accepted hazardous liquid wastes from barges or tankers in California, then shipped them in ballast water of empty oil tankers north to Alaska.

There, the ballast was run through Alyeska's Ballast Water Treatment plant. But because the plant is designed only to separate oil from water, much of the waste was dumped untreated into Valdez Harbor, a violation of federal regulations, Hamel alleged.

On Tuesday, EPA spokesman David Cohen said the letter has been received and turned over to EPA investigators. "It is being taken seriously and it is being looked into—as we look into any

allegation of this kind," he said.

A spokeswoman for Thornburgh said she was unaware of action to be taken by the Department of Justice on Hamel's accusations. Rep. George Miller (D-Martinez), acting chair of the House Interior Committee, also received a copy of Hamel's letter and expressed "deep concern" about the allegations, a spokesman said.

Meanwhile, in Alaska, several state legislators also were taking the allegations seriously. State

**'It's become very clear to us we need to find out what common practice is.'**

HAROLD GEREN  
EPA Water Permits Chief

Rep. Cliff Davidson, a Democrat from Kodiak, said he was considering calling hearings of his resources committee.

He said he was also concerned about Arco's practices, since Harold C. Heinze, a former Arco transportation executive, has been named commissioner of Alaska's Department of Natural Resources by Hickel, the Republican former U.S. interior secretary who took over the governor's office in January.

## Investigation

In his letter, Hamel—who is engaged in a series of legal disputes with Exxon—said that on Aug. 4, 1988, about 8,000 tons of toxic wastes were transferred in San Francisco Bay from the Exxon Galveston tanker to the Exxon Valdez. The wastes, he said, mixed with 21,203 tons of ballast water and were pumped through the Alyeska treatment plant later in the month.

Some sort of transfer appears to be corroborated by a page from the notes kept by the Exxon Valdez's second mate, which were obtained from Exxon during a deposition in a court case related to the Valdez spill, and released by attorneys representing the plaintiffs suing Exxon.

The handwritten page—a record of ship's activities that month passed from a mate going off shift to the mate relieving him—contains a notation that the Exxon Valdez would "lighter," or transfer, oil to the Exxon Galveston "after we take [50,000 barrels in] tank washings from them." That's roughly 6,000 tons.

If such hazardous wastes were indeed disposed of through the Alyeska treatment plant, it would be a violation of federal guidelines governing the plant's operations, according to EPA officials. The plant is not designed to treat such wastes.

Discharge of the wastes into Valdez Harbor could result in

"some very severe, acute toxic effects on the environment . . . and long-term, chronic effects as well," said Erik Olson, counsel with the National Wildlife Federation, one of several environmental groups suing Exxon over the 1989 spill.

The state of Alaska is investigating Hamel's allegations. Water samples from the hold of another Exxon tanker docked in Valdez, the Exxon North Slope, were taken before noon Tuesday, according to Commissioner John A. Sandor of the Alaska Dept. of Environmental Conservation.

On Tuesday, the Wall Street Journal quoted an Exxon spokesman admitting that the company shipped waste water to Alaska, but adding that such shipments were within federal guidelines. In an interview with The Times, Exxon spokesman Les Rogers read from a prepared statement disputing Hamel's charges and maintaining that all discharges of ballast water fell within federal guidelines.

Also on Tuesday, officials at both Arco and BP confirmed that those companies have transferred oily ballast water or tank washings from one tanker to another for shipment to Alaska.

John Andes, a spokesman for British Petroleum's American subsidiary, said that it is "common practice" to transfer tank washings from oil tankers cleaned out before going into dry dock, where tanker holds must be free of vapors and fumes.

Andes said that a tanker's giant tanks are flushed first with crude

oil and then with water, to clean out oil residues. The resulting washings—including sludge—are then transferred to an Alaska-bound tanker for disposal in Valdez, he said.

He said that the company normally did not use solvents or detergents in the cleaning process.

Andes added that BP believes the process does not violate federal guidelines. The tank washings are easily treatable by the Alyeska plant and fall within the purview of the plant's EPA permit, he said.

"This is kind of a tempest in a teapot," Andes said.

Jerry Aspland, president of Arco Marine Inc., Los Angeles-based Arco's shipping subsidiary, said the company had similarly transferred tank washings once from a dry dock-bound tanker to one headed for Alaska.

One other time, he said, a tanker transferred ballast water to another during a "lightering" operation. As oil was pumped from the first ship to the second, ballast water was pumped back from the second to the first to balance the two, Aspland explained.

He termed "misguided" perceptions that such waste water would constitute a hazard.

Heinze—who was Aspland's superior before he left Arco to join Hickel's administration—said he was not aware of Arco's practices. But, he added, "There was no reason why I would be."

Times staff writers Michael Parrish in Los Angeles and Rudy Abramson in Washington contributed to this story.

# Lawmakers fault Hickel's negotiating

## Exxon deal worth only half of sum sought, report claims

■ Fishermen, coastal towns grow wary as bigger players near settlements in Exxon oil spill fight **A9**

■ Coastal Native villages condemn Hickel spill negotiations, threaten to block deal **A9**

By DAVID FUTCH

TIMES WRITER

JUNEAU — Legislators, left out of negotiations to settle Exxon oil spill lawsuits, are heating up their criticism of the governor for not telling them the details of settlement talks.

The Boston Globe and Wall Street Journal quoted unnamed sources citing details of settlement terms this week that legislators have been unable to pry from Gov. Walter J. Hickel and state Attorney General Charles Cole.

Both officials have refused to discuss details of the talks.

"Frankly it makes me angry to see that we learn far more information from the Boston Globe and the Wall Street Journal than we have been able to learn in Alaska," said Sen. Arliss Sturgulewski, R-Anchorage.

Hickel originally proposed that Exxon pay \$1.2 billion to settle state and federal government lawsuits stemming from the March 1989 spill from the Exxon Valdez tanker in Prince William Sound.

But the Journal report published Thursday placed the value of the settlement at less than \$1 billion because Exxon would pay out the money over a period of time rather than in one lump sum.

The newspapers reported payments would span a decade with a \$200 million payment up front to set up a fund to restore the Sound.

The Globe said the payments would be tax deductible, with the initial payment followed by \$160 million the second year and \$80 million a year for eight years.

The \$160 million would cover costs incurred by the state and federal government because of the spill, the Journal story said.

Money would be allocated by three federal trustees and one state trustee, the Journal said. Exxon and federal officials would not comment on the reports.

Critics say the installment plan, because of inflation, would net the state far less money in real terms than the \$1 billion reportedly being sought by Hickel.

"In real terms it's about half of Hickel's proposed \$1 billion settlement. And we don't even

## Reports

Continued from page A1

mercial fisherman and leader of the Oil Reform Alliance, a group formed after the spill to lobby for changes in oil industry practices.

Hickel would not discuss specifics of the settlement Thursday, but denied legislators were being left out of talks taking place in Washington, D.C., where Cole is meeting with federal officials.

"They (legislators) are not being left in the dark," Hickel said. "We're doing the best thing we can. We're trying to solve a very difficult problem."

Hickel has proposed settling state civil and federal criminal lawsuits against Exxon for \$1.2 billion. Much of the money would buy private timber area in Prince William Sound and establish a conservation area and marine park there.

At least one lawmaker, Rep. Cliff Davidson, D-Kodiak, said he felt like "a legislative mushroom," in the dark without a clue about the latest direction of settlement talks.

"Nobody knows what's going on. None of us," Davidson said. "If the governor is feeling good about this settlement, I wish he would tell us why because we (legislators) have spent the last two years on this thing and here's a lot of pain."

"I've had my eyes open all along and I haven't seen a piece of information that I can go to the bank of my constituency and say we're being taken care of."

Rep. Max Gruenberg, D-Anchorage, made a move Thursday to bring the process into the open.

At a House Judiciary Committee meeting Thursday, Gruenberg offered a bill requiring any settlement proposal be given to

the Legislature for review.

The bill would allow lawmakers to prevent a settlement if they decide it is not in the public's best interest.

The bill gives the Legislature opportunity to review a proposed settlement for 60 days.

If necessary, a special session could be called to further study a settlement proposal. Details of a settlement would become public, the bill says.

"I don't want to comment on the settlement until I've seen it," Gruenberg said. "My mind is open."

Gruenberg and the House Judiciary Committee are scheduled to hold a meeting with the attorney general today to discuss the settlement.

Sen. Sturgulewski said Thursday that besides legislators, the people most affected by the spill, including residents and fishermen who live and work near the Sound, have been left out of negotiations.

Sen. Pat Pourchot, D-Anchorage, said there is an inherent danger involved with having only three or four people involved in the negotiations.

The result could be someone forgetting certain aspects that should be included in the final deal, Pourchot said.

"They are not going to bring a full range of views in and structure a deal trying to accommodate all these people," Pourchot said.

Hickel's acting press secretary Harry Gamble said the governor has offered to talk with key legislators at their convenience.

There is a caveat. Gamble said he has no idea how much detail Hickel can give to legislators.

"If we negotiate this in the press or bring in other groups we're likely to be in court for eight or 10 years," Gamble said.

This report includes material from the Associated Press.



Hickel



Sturgulewski

informed in the future.

April 10 in Anchorage.

Most of the criticism of the settlement talks in Alas-

won't be victims of Exxon's secret deal. We won't be sold out by the government."

## LAWSUITS: Natives, fishermen get class-action voice in court

Continued from Page E-1

fore filing suits in federal court.

Holland has ruled that only people who can show actual physical damage from the 11 million-gallon spill by the tanker Exxon Valdez can sue the oil company. Shortell's decision allows anyone owning a business or proper-

ty affected by the March 1989 spill to sue.

The different approaches taken by the judges suggests that much of the spill litigation may be concentrated in state court.

Attorney Lloyd Miller, who represents the class of Alaska Natives hurt by the spill as well as serving as liaison counsel for all the

plaintiffs, said Shortell's decision also may promote settlement talks.

"It means Exxon and Alyeska and the other defendants must face the full impact of the oil spill by meeting in court all the injured parties, all the Alaska Natives, all the fishermen, not merely those who hire a lawyer and file a lawsuit,"

Miller said.

"It's a tremendous victory and should be a sobering decision (for Exxon)," he said.

"It should encourage, by all logic, settlement negotiations between the parties, because the defendants can be sure they are negotiating with everybody who was injured by the spill."

## DENALI NATIONAL PARK AND PRESERVE

A task force of top National Park Service managers will hold meetings next month to gather public opinion concerning access into the Kantishna area of Denali National Park and Preserve. The meetings will focus on three topics:

- The safety and adequacy of the existing park road.
- The current law regarding access rights along the road.
- The feasibility and desirability of alternative access to Kantishna, a large area of privately held mining claims at the west end of the park road.

Members of the task force include Jim Parham, NPS executive assistant to the director; Bob Barbee, superintendent, Yellowstone National Park; Don Castleberry, NPS Midwest regional director; Boyd Evison, NPS Alaska regional director; Paul Haerndel, NPS Alaska associate regional director for resource services; Jim Straughan, transportation engineer for the NPS Denver Service Center; and Russ Berry, superintendent of Denali.

The task force is an outgrowth of a fall, 1990, meeting between NPS Director James Fidenour and members of the Alaska Congressional delegation. The group will visit the park again this summer to see the operation of the road and review alternative access routes. By fall, the task force will report their findings to the director of the National Park Service.

After meeting with state of Alaska officials on February 19 in Juneau, the task force will hold the following public meetings:

- |             |           |        |                                     |
|-------------|-----------|--------|-------------------------------------|
| February 20 | Anchorage | 8 p.m. | Anchorage Museum of History and Art |
| February 21 | Fairbanks | 6 p.m. | Noel Wien Library auditorium        |
| February 22 | Healy     | 5 p.m. | Tri-Valley Community Center         |



## ATTENTION:

### Important Public Meeting!

### Public Input Needed on Education Questionnaire

A public meeting will be held for the WISE Project: "Winning With Stronger Education", etc.

**Friday, February 15th - 6:30 to 8:30 p.m.**  
at UAA Consortium Library Building, Room 118

The purpose of the meeting is to solicit public input on a questionnaire that will be mailed this month to 1,000 Anchorage families asking their opinion on a wide-range of education issues. Anyone interested in education is encouraged to attend and express their ideas about what kind of questions should be included in the questionnaire.

This is your chance to have a say on the education of your children. For further information, please call Craden & Associates at 278-3882. For information on the WISE Project, please call Robert Gustafson at 278-3557.

*We're getting smart about Education!*



# What's News—

\* \* \*

## Business and Finance

\* \* \*

Exxon appears close to settling civil litigation stemming from the Valdez oil spill. But environmental advocates want the talks halted.

(Story on Page A1)

CBS posted a big fourth-quarter loss and...

WALL STREET JOURNAL

THE WALL STREET JOURNAL THURSDAY, FEBRUARY 14, 1991 A3

## Exxon Appears to Be Close to Settling Valdez Suits for Less Than \$1 Billion

By ALLANNA SULLIVAN  
And RICHARD B. SCIMITT

Staff Reporters of THE WALL STREET JOURNAL

Exxon Corp. appears close to settling civil litigation stemming from the Valdez oil spill, even as environmental advocates call for a slowdown in negotiations.

Alaska Attorney General Charles Cole, who has been negotiating with the company along with federal agencies involved in the case, went to Washington, D.C., to meet representatives of the federal agencies. Alaska Gov. Walter J. Hickel is expected to be in Washington by today. An agreement could be signed soon.

There is also strong pressure to settle federal criminal charges against Exxon, but neither the company nor the Justice Department has indicated that a plea bargain is imminent. There hasn't yet been any contacts between Exxon and the Justice Department, individuals familiar with the case said.

Individuals familiar with the talks say tentative terms of the settlement place the value at less than \$1 billion because Exxon will pay out the money over a period of time rather than in a lump sum. Payments are expected to span possibly 10 years, putting the present value of the settlement at no more than \$800 million by the most generous estimates. The settlement would be in addition to the \$2.5 billion Exxon spent on the cleanup.

### Breakdown of Payments

Of that amount \$35 million would be allocated to continue cleanup efforts this year. A \$200 million payment would be made up front to set up a restoration fund. Another \$160 million would be paid to cover costs incurred by the state and fed-

lems. CBS slashed its quarterly dividend to 25 cents a share from \$1.10 a share.

CBS had warned last November about the quarterly loss and the expected deficit at the network in 1991, though the size and extent of the problems weren't clear until yesterday's report. But Wall Street, buoyant on most stocks in recent days, took the bleak CBS numbers in stride. CBS shares closed at \$167.50, up 25 cents, in New York Stock Exchange composite trading yesterday. They had fallen to the \$153 range in the first week of February as the company completed its repurchase of 44% of all shares outstanding.

In the latest quarter, the baseball write-down included \$55 million for the first season of the contract and another \$115 million in expected losses for the next three years of the total \$1.06 billion package.

For the year, CBS profit plunged 63% to \$110.8 million, or \$4.30 a share, from \$296.3 million, or \$11.51 a share, in 1989. Revenue rose 10% to \$3.26 billion from \$2.96 billion. The largest part of the full-year earnings came from interest income, which provided \$152.2 million before taxes in 1990, down 16% from the interest earned in 1989. Now that CBS's nearly \$3 billion cash hoard has been reduced to \$800 million be-

eral government relative to the spill. Money would be allocated by three federal trustees and one state trustee.

Mr. Cole said in an interview late yesterday that no agreement had yet been reached on the amount or the terms of payment. "It's been very hard bargaining; don't think it's just a done deal," he said. "Negotiations could collapse on any of a number of issues. They're hanging by a spider's thread."

Exxon officials declined to comment on whether the company is in settlement talks.

Meanwhile, environmental groups are asking that talks be placed on hold until they can examine the data on which the settlement is based, according to Sarah Chasis, attorney for the Natural Resources Defense Council, which represents 11 environmental groups that have litigation pending concerning the spill.

Lloyd Miller, an Anchorage lawyer, figures spacing the payments out over 10 years gives the settlement an actual current value of only about \$650 million. Mr. Miller, a spokesman for lawyers who have filed scores of private civil suits against Exxon on behalf of fishermen and others, said Gov. Hickel disclosed the installment plan to a group of community leaders in Juneau Tuesday.

"It is our opinion that a \$650 million settlement is a severe undervaluation of the natural resources damage caused by the oil spill, and that if this deal goes through, the state and federal governments have been severely outdealed by Exxon," said Mr. Miller. He said it was also "irresponsible" for the government to settle the case now because the full extent of the damage from the spill isn't yet known.

On Friday, the Sierra Club Legal Defense Fund, along with the Natural Resources Defense Council and the National Wildlife Federation, wrote to Gov. Hickel of their "serious concern" of settlement terms as reported by the media.

### Exxon Role Criticized

Among the groups' concerns, according to Eric Jorgensen, an attorney for the Sierra Club fund in Juneau, is that the government might agree to allowing Exxon to have some say over how the settlement funds are disbursed.

In Washington, Justice Department officials publicly insisted that prosecutors are continuing to prepare for a criminal trial beginning April 10. Exxon in recent weeks hasn't formally approached the department about arranging a plea bargain to settle the criminal charges. Federal prosecutors weren't directly involved in yesterday's talks, although the Justice Department is monitoring those discussions.

Attorney General Dick Thornburgh, who bitterly resented criticism of the department's settlement talks with Exxon last year, now wants it to be clear that Exxon, not the agency, is seeking a plea bargain. Still, Mr. Thornburgh and his

THE WALL STREET JOURNAL THURSDAY, FEBRUARY 14, 1991

A9

## Exxon Appears Close to Settling Civil Litigation on Valdez Spill

*Continued From Page A3*

money deal to the risk of going to trial.

It remains uncertain what terms the Justice Department would demand along with a guilty plea. One possible arrangement would be for Exxon to agree to classify some portion of its monetary settlement as a criminal fine, thereby conceding a degree of criminal culpability. It isn't known whether the fine would be added to the total civil settlement or would be drawn from that settlement.

Another sticking point in the settlement negotiations might be objections raised by Charles Hamel, a former oil tanker broker who has been fighting Exxon and other major oil companies with interests in Alaska. Their disputes focus on mutual business interests involving Mr. Hamel and the oil companies. In a letter to Mr. Thornburgh and Environmental Protection Agency chief William Reilly, Mr. Hamel

alleges that Exxon has been dumping hazardous wastes into Alaska's Prince William Sound. The letter says that the dumping occurred before and after the Exxon Valdez oil spill.

Mr. Hamel is calling for these allegations to be examined in conjunction with the settlement negotiations.

California Rep. George Miller, who received a copy of the letter, appears to agree on a need to slow down the talks. Regarding Mr. Hamel's allegations, Mr. Miller said, "I plan to investigate these serious charges and expect the Justice Department to do the same."

As acting chairman of the House Interior Committee, Mr. Miller has jurisdiction over Alaska lands, the Alaskan pipeline and offshore energy resources.

In his letter, Mr. Hamel specifically alleges that 50,000 barrels, or 8,000 tons, of hazardous waste was loaded into the ballast tanks of the supertanker Exxon Valdez on Aug. 4, 1988. The waste was taken to Alaska where it was unloaded into the ballast water treatment plant at Valdez. However, because the plant wasn't designed to handle such wastes, the treated water was still contaminated when it was ejected back into Valdez Harbor.

Mr. Hamel alleges that the Exxon Long Beach, sister ship to the now renamed Exxon Valdez, continued that practice at least through last year. He claims that he has gathered information on numerous violations from Exxon insiders who are irate about the practice.

A spokesman for Exxon said the oil giant had no immediate comment on Mr. Hamel's allegations.

"Until Mr. Hamel offers evidence supporting his waste dumping claim, we have nothing to work from," said a spokeswoman for Alyeska Pipeline Service Co., which is owned by seven oil companies, including Exxon.

—Paul M. Barrett contributed to this article.

# Exxon reportedly gets years to pay damages

By William P. Coughlin  
GLOBE STAFF

The \$1 billion Exxon Valdez oil spill settlement being completed by Exxon Corp., the federal government and Alaska calls for payment over a period of years and the payments will be tax deductible, sources said yesterday.

Because the payments to a Prince William Sound Restoration Fund will be spread out, the present dollar value of the \$1 billion is only \$550 million, the sources said.

The settlement reportedly will also let the oil company deduct costs of all future cleanup from the fund.

Some \$160 million will be deducted from the fund to reimburse federal and state agencies for cleanup costs already incurred.

It also was revealed that the agreement gives Exxon a voice on any panel set up to decide how and where its restoration funds will be spent in Prince William Sound.

In Congress, US Rep. George Miller, a California Democrat and vice chairman of the Interior Affairs Committee, has demanded a "full briefing" from Attorney General Dick Thornburgh, one of the negotiators, before any settlement is made public.

In Alaska, critics condemned the reported settlement, focusing on Gov. Walter Hickel.

Rick Ott, a toxicologist who heads Alaska's Oil Reform Alliance, said: "It's apparent this state did not elect a governor. We elected instead another lobbyist for the oil industry... People are not with him. A settlement like this sells Alaska short."

Michael Wenig of Trustees for Alaska, an environmental law firm, said: "If it is true that they can write this off, it is a total outrage. If the amount of money is such that after you pay for existing bills for damage assessment up to now, and whatever cleanup still needs to be done, and after all that, there is nothing left for restoration, then it is a total tragedy.

Wally Hickel deserves a lot of blame for this."

A spokesman for Hickel said the governor would not comment on the reported deal.

The Exxon payments to the fund would be made in installments: \$200 million the first year, \$160 million the second and \$80 million for the last eight years.

Because it will pay in installments, "Exxon gets to keep most of its money, on which it will accrue interest," one source said. "It's like a company paying a worker only \$10,000 of a \$30,000 salary, then promising X amount-per-year after that."

At Exxon USA headquarters in Texas, spokesman Les Rogers speaking for vice president C.M. Harrison who has been involved in negotiations, said: "Our instruction is we have no comment to anyone about anything."

In Washington, a Justice Department spokeswoman, Amy Casner, said: "Nothing has changed... We are pressing for an April 10 trial." Exxon was indicted on five criminal charges last winter. The trial is scheduled for April.

Asked if Attorney General Charles Cole of Alaska met yesterday with Thornburgh, Casner said: "I've no response to that."

Neither Cole nor Harrison returned telephone calls yesterday.

Rep. Miller said he is concerned that the Alaskan fishing industry and mayors "may have been excluded" from negotiations, and "the settlement may prejudice their ability to get fair compensation."

He also said his committee will probe charges that Exxon is dumping hazardous waste into the ballast water of ships.

These allegations were made in a letter delivered Tuesday to Thornburgh and William Reilly, administrator of the Environmental Protection Agency, by a shipping broker based in Alexandria, Va., Charles Hamel.

*Boston  
Globe  
2/14/91*

HB

HO

# DIVISION OF LEGAL SERVICES

## LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

P.O. Box Y, Juneau, Alaska 99811  
(907) 465-3867 or 465-2450  
FAX (907) 465-2029

Deliveries to: 240 Main Street  
Court Plaza, Room 500  
Mail Stop 3101

### MEMORANDUM

February 22, 1991

**SUBJECT:** Sectional summary of HB 110

**TO:** Representative Mike Navarre  
Attn: Tom Ackerly

**FROM:** Theresa L. Bannister *TB*  
Legislative Counsel

You have requested a sectional summary of the above described bill. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1 rewrites AS 44.81.260, the section that currently establishes confidentiality requirements for the records of the Commercial Fishing and Agriculture Bank (CFAB).

AS 44.81.260(a) makes confidential those records that are identified with a specific borrower, bank member, or loan applicant, that can be identified as being from the records of one of those persons. Prohibits the bank or the bank's directors, officers, employees or agents from disclosing the records, except in certain listed situations.

AS 44.81.260(b) authorizes CFAB to keep other records (those not subject to (a)) confidential, except in certain indicated situations.

AS 44.81.260(c) states that a borrower, bank member, or loan applicant may authorize CFAB to disclose those records provided to the bank by the person. The release must be in writing.

AS 44.81.260(d) defines "member" and "records" for the section.

Section 2 gives the Act an immediate effective date.

If I may be of further assistance, please advise.

TLB:pl  
91-104.plm

ALASKA STATE LEGISLATURE  
REPRESENTATIVE MIKE NAVARRE

Co-Chair  
House Finance Committee  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3779

March 11, 1991

**MEMORANDUM**

**TO:** Representative Dave Donley, Chairman Judiciary Committee

**FROM:** Representative Mike Navarre

**SUBJECT:** House Bill 110, An Act relating to the confidentiality of the records of the Commercial Fishing and Agriculture Bank; and providing for an effective date.

.....

I would like to request a hearing on House Bill 110 at your earliest convenience.



ALASKA STATE LEGISLATURE  
REPRESENTATIVE MIKE NAVARRE

Co-Chair  
House Finance Committee  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3779

March 12, 1991

Memorandum

TO: Representative Dave Donley, Chair Judiciary Committee

FROM: Representative *Mike Navarre*

SUBJECT: House Bill 110, An Act relating the confidentiality of the records of the Commercial Fishing and Agriculture Bank; and providing for an effective date.

.....  
PURPOSE of HB 110

The existing CFAB statutes contain inconsistencies and undefined terms which are difficult to interpret and invite litigation by borrowers or others who might assert damages from actions in violation of the statute. This bill also provides avenues for the release of legitimate information which are found in the statutes or regulations governing other commercial lenders.

Benefits of this Legislation

1. **Eliminate Cost-** Currently CFAB has no choice but to literally force a formal confrontation before a Court. In the end CFAB is ordered to produce the information at great legal expense. This procedure is costly to all parties involved.
2. **Current Law-** This legislation will bring CFAB in concurrence with other lending institutions. Under current law CFAB cannot release "legitimate" information when provided with a subpoena while other lending institutions can.
3. **Retain Privacy-** This legislation still provides the elements of privacy to CFAB and its members, borrowers, and applicants while at the same time provides information that is sought within the statutory and/or regulatory frameworks established with respect to the customers of financial institutions generally.

HOUSE COMMITTEE REPORT

(7)  
Date Referred: February 27, 1991

FURTHER REFERRALS:

Date of Committee Action: 3-26-91

The JUDICIARY Committee considered:

HB 110

HOUSE BILL NO. 110

CONFIDENTIALITY OF CFAB RECORDS

"An Act relating to the confidentiality of the records of the Commercial Fishing and Agriculture Bank; and providing for an effective date."

RECOMMENDATIONS:

be replaced with HB 110  the same title

a new title

have attached amendments(s)

do pass

do not pass

no recommendations

individual recommendations

additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(s): (Dept) \_\_\_\_\_

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

fiscal impact \_\_\_\_\_

fiscal note(s) \_\_\_\_\_

zero fiscal note \_\_\_\_\_

zero fiscal note(s) CFAB 2-27-91

SIGNING DO PASS	DP	OTHER RECOMMENDATIONS	DNP	NR	AM
David Donley					
W. Shumaker	-				
Mark O'Rourke	x				
Kevin Pad Parkell	✓				
H. Elgin	✓				
Perry J. Masten	✓				
Mike Miller	✓				

David Donley  
CHAIRMAN'S SIGNATURE

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 5, 1991

FURTHER REFERRALS:

Judiciary

Date of Committee Action: 2-26-91

The LABOR AND COMMERCE Committee considered:

HB 110

HOUSE BILL NO. 110

CONFIDENTIALITY OF CFAB RECORDS

"An Act relating to the confidentiality of the records of the Commercial Fishing and Agriculture Bank; and providing for an effective date."

RECOMMENDATIONS:

be replaced with \_\_\_\_\_ [ ] the same title

[ ] have attached amendments(s) [ ] a new title

do pass

[ ] do not pass

[ ] no recommendations

[ ] individual recommendations

[ ] additional referral to the \_\_\_\_\_ Committee

ADOPTS: \_\_\_\_\_ letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) \_\_\_\_\_

APPROVES PREVIOUS: (Dept/Date) \_\_\_\_\_

[ ] fiscal impact \_\_\_\_\_


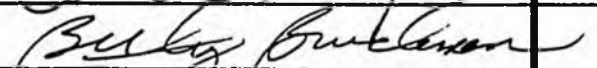
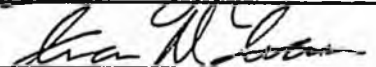
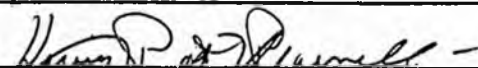
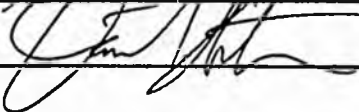
[ ] fiscal note(s) \_\_\_\_\_


zero fiscal note CFAB

[ ] zero fiscal note(s) \_\_\_\_\_

SIGNING DO PASS:

SIGNING OTHER RECOMMENDATIONS:

	Check appropriate column:	Do Not Pass	No Rec	Amend
				
				
				
				
				

  
Chairman's Signature

FEB 25 '91 12:28 HOUSE JUNEAU

FISCAL NOTE

P.6/6

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. HB 110

Revision Date: \_\_\_\_\_ Department Affected: \_\_\_\_\_

Title: CONFIDENTIALITY OF CPAB BRU: \_\_\_\_\_

RECORDS Component: \_\_\_\_\_

Sponsor: REP. NAVAREE

Requestor: HOUSE LABOUR & COMMURCE COMPONENT SERIAL NO. [ ] [ ] [ ] [ ]

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

Estimate of current year impact: NONE

ANALYSIS: (Attach a separate page if necessary.) HB 110 AFFECTS THE ALASKA COMMERCIAL FISHING + AGRICULTURE BANK ONLY. NO FISCAL IMPACT TO ANY STATE AGENCY IS EXPECTED.

Prepared By: BILL HALL, BUSINESS DEV OFFICER Phone: 226-2007

Division: CPAB Date: 2-25-91

Approved by Commissioner: B. Hall

Agency: ALASKA COMMERCIAL FISHING + AG. BANK Date: 2-25-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

ALASKA STATE LEGISLATURE  
REPRESENTATIVE MIKE NAVARRE

Co-Chair  
House Finance Committee  
P.O. Box V  
Juneau, Alaska 99811  
(907) 465-3779

February 21, 1991

**Memorandum**

**TO:** Representative David Finklestein, Chair L&C Committee

**FROM:** Representative Mike Navarre 

**SUBJECT:** House Bill 110, An Act relating the confidentiality of the records of the Commercial Fishing and Agriculture Bank; and providing for an effective date.

.....  
**PURPOSE of HB 110**

The existing CFAB statutes contain inconsistencies and undefined terms which are difficult to interpret and invite litigation by borrowers or others who might assert damages from actions in violation of the statute. This bill also provides avenues for the release of legitimate information which are found in the statutes or regulations governing other commercial lenders.

**Benefits of this Legislation**

- 1. Eliminate Cost-** Currently CFAB has no choice but to literally force a formal confrontation before a Court. In the end CFAB is ordered to produce the information at great legal expense. This procedure is costly to all parties involved.
- 2. Current Law-** This legislation will bring CFAB in concurrence with other lending institutions. Under current law CFAB cannot release "legitimate" information when provided with a subpoena while other lending institutions can.
- 3. Retain Privacy-** This legislation still provides the elements of privacy to CFAB and its members, borrowers, and applicants while at the same time provides information that is sought within the statutory and/or regulatory frameworks established with respect to the customers of financial institutions generally.

## **What is CFAB?**

Alaska Commercial Fishing and Agriculture Bank (CFAB) began operations in 1980. Its sole mission is to provide financing of all kinds to the commercial fishing industry and the agriculture industry (including timber) in Alaska.

## **What kinds of loans and repayment programs are available from CFAB?**

CFAB can make loans for almost any fishing-related or farming-related purpose. The most common purposes are the purchase, modification, or refinancing of a vessel; purchase of a limited entry permit; gear, engine, or equipment replacement or upgrade; general operating capital; and fish processing, etc. There are no "standard" repayment terms or programs — we work with each applicant to determine a repayment schedule appropriate to that particular loan transaction.

## **Who may borrow from CFAB?**

In order to be eligible for consideration as a CFAB borrower, an applicant must be commercially involved in one of the industries mentioned earlier. An individual applicant must be a bona fide Alaska resident. A partnership must be comprised of Alaska residents. If the applicant is a corporation, the majority ownership and control must rest with Alaskans. There are some exceptions to the latter rule for companies which are involved in shorebased fish processing.

Eligibility, however, is only a first step. To obtain a CFAB loan, an applicant must be found by CFAB to be capable and creditworthy within the context of the specific loan request. The standards used by CFAB are essentially the same as those of any responsible lender. However, CFAB's specialized purposes, and the experience we have gained, may permit us to consider a broader range of applicants than do most other lenders.

## **Who owns CFAB?**

CFAB is a cooperative. This means that each borrower becomes an owner through a modest purchase of CFAB stock when a loan is made. The State of Alaska is also an owner. CFAB was established by a special Alaska statute, and the State made an initial investment of "seed money" — that money is expected to be returned to the State as borrowers' ownership grows.

## **Does that mean the State operates CFAB?**

CFAB's statute provides for it to be operated as a private cooperative rather than as a State agency. Its basic policies and directions are established by a seven-person Board of Directors, which hires professional management and staff to operate the business. Five of the Directors must be borrower-owners of CFAB and are elected by the total borrower-ownership. The other two Directors are appointed by the Governor of Alaska. All Directors' terms are for three years. CFAB holds an ownership meeting each year - borrower-owners have the opportunity to vote on important matters, to receive reports from Directors and management, and to elect Directors. The State's stock is non-voting, although CFAB provides periodic reports to State officials.

## **Where does CFAB get its money to loan?**

CFAB is not limited as to its source of funds. Since its inception, CFAB has borrowed funds for re-lending from the Federal Farm Credit System.

## **What is CFAB's interest rate and how is it set?**

Although CFAB occasionally makes fixed rate loans, the vast majority of its loans are on a variable rate basis. That is, the rate will change — up or down — as CFAB's costs change. There is no single initial rate — the initial rate is based on the kind of loan involved. Most important, we use a procedure to objectively analyze the credit-worthiness of each individual applicant, which permits us to offer the most favorable interest rates to the most desirable risks. CFAB's interest rates overall are set to provide sufficient income to pay its own interest costs and operating expenses and to provide a small margin. Since CFAB is a cooperative, any margin which is actually produced is either returned to the borrower-owners or otherwise used to their benefit.

— EXCERPTED FROM A CFAB BROCHURE. —

HB 110

BACKGROUND/DRAFT FOR SECTIONAL ANALYSIS - ~~PROPOSED BILL "A"~~

The existing section (AS 44.81.260) of CFAB's statute which addresses the confidentiality of its records contains a number of ambiguities, undefined terms, and inconsistencies which are difficult to interpret and which instill an overshadowing fear of litigation by borrowers or others who might assert damages from actions in violation of the statute. Perhaps more important, it does not provide the avenues for "legitimate" releases of information which are found in the statutes or regulations governing other commercial lenders such as commercial banks, credit unions, savings and loan associations, etc.

The latter circumstances have proven to be confounding and challenging to attorneys, regulators, law enforcement agents, and judges, etc. As time has passed in CFAB's "life" and as the number of individuals and companies with whom CFAB does business has grown, there are more occasions or opportunities for litigants, regulators, and enforcement officers to approach CFAB with expectation that a summons, subpoena, or other "normal" procedure will be effective in obtaining records or information.

CFAB's statute, as it exists, leaves the bank with no option except to say "No" and to literally force a formal confrontation before a Court. Such a posture is costly -- to CFAB and to all concerned -- and creates an unfortunate burden on the legal system. In every situation

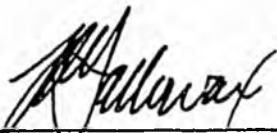
Background/Draft for Sectional Analysis  
Proposed Bill "A"

which has been finalized to date, CFAB has predictably "lost"; i.e., the Court has ordered production of the information at issue. On the other hand, CFAB has "won" the protection of a Court Order against the potential claims of the parties who are the subjects of the information.

This legislation addresses the above circumstances. It retains the elements of privacy for CFAB and its members, borrowers, and applicants while at the same time it provides for the disclosure and release of information when that information is sought within the statutory and/or regulatory frameworks established with respect to the customers of financial institutions generally. Within that context, it does not create inappropriate exposures for CFAB members, borrowers, and applicants; neither does it provide protections which are unavailable to the customers of other institutions.

HB 110: An Act relating to the confidentiality of the records of the Commercial Fishing and Agriculture Bank; and providing for an effective date."

The department has no opposition to this bill, as it does not affect any of the department's programs.

 *Asst Commr*  
\_\_\_\_\_  
Glenn A. Olds, Commissioner

Date: 3-21-91

FISCAL NOTE

STATE OF ALASKA  
1991 LEGISLATIVE SESSION

BILL NO. HB 110

Revision Date: \_\_\_\_\_ Department Affected: Commerce & Economic Dev.  
 Title: Confidentiality of the BRU: Banking, Securities & Corporations  
Commercial Fishing & Agriculture Bank Component: Banking  
 Sponsor: Rep. Navarre  
 Requestor: \_\_\_\_\_ COMPONENT SERIAL NO. 

1	2	3	3
---	---	---	---

Expenditures/Revenues: (Thousands of Dollars)

OPERATING	FY 92	FY 93	FY 94	FY 95	FY 96	FY 97
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
---------	---	---	---	---	---	---

REVENUE	0	0	0	0	0	0
---------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME						
TEMPORARY						

Estimate of current year impact: None

ANALYSIS: (Attach a separate page if necessary.)

Prepared By: Willis F. Kirkpatrick, Director Phone: 465-2521  
 Division: Banking, Securities & Corporations Date: \_\_\_\_\_  
 Approved by Commissioner: Glenn A. Olds  
 Agency: Department of Commerce & Economic Development Date: 3-20-91

Distribution (by preparer): Legislative Finance, Legislative Sponsor, Requestor, OMB, & Impacted Agency(ies).

H B

1 2 8



# City and Borough of Sitka

304 LAKE STREET . SITKA, ALASKA . 99835

February 24, 1992


Representative Dave Donley, Chairman  
House Judiciary Committee  
P.O. Box V  
Juneau, AK 99811

Dear Representative Donley:

I am writing this letter to express my support for HB 128 relating to the office of Municipal Clerk. I feel that this legislation is extremely important because, in many of the communities of this State, the Clerk is the principal professional employee of the city or borough. It is important to codify the position and powers which are already, in many cases, exercised by the Clerk in those communities.

I also feel it is very important because, as an organization, the Alaska Association of Municipal Clerks have been working steadily to improve the professionalism of that office and this is another matter contributing to their efforts to improve the status of the Municipal Clerk

Very truly yours,



Theron J. Cole, Municipal Attorney  
City and Borough of Sitka



# City and Borough of Sitka

304 LAKE STREET . SITKA, ALASKA . 99835

February 21, 1992


Representative Dave Donley, Chairman  
House Judiciary Committee  
P.O. Box V  
Juneau, Alaska 99811

Dear Representative Donley:

The Alaska Municipal League, of which Sitka is a member, continues to support the intent and purpose of CS for HB No. 128 (CRA).

I wish to add my personal support for this much needed legislation.

Sincerely,



Stuart O. Denslow  
Administrator



# City and Borough of Sitka

304 LAKE STREET . SITKA, ALASKA . 99835

February 20, 1992

Representative Dave Donley, Chairman  
House Judiciary Committee  
P.O. Box V  
Juneau, AK 99811

Dear Representative Donley:

In November, 1992, during the annual meeting of the Alaska Association of Municipal Clerks, the membership as a whole voted to confirm our support of CS for HB No. 128 (CRA). A list of the membership is attached.

It should be noted that the 1992 Alaska Municipal League Policy Statement continues to support the intent of CS for HB No. 128 (CRA).

If you have any questions prior to the hearing on Monday, February 24, 1992, I would be more than happy to receive your phone call at 747-3294.

Sincerely,

*Melinda L. Jenkins*

Melinda L. Jenkins, President  
Alaska Association of Municipal Clerks

cc: Todd Clevenger  
Georgianna Zimmerle

ALASKA ASSOCIATION OF MUNICIPAL CLERKS

Aleutians East Borough P.O. Box 349 Sand Point, Alaska 99611 Lynn Ramsey, Clerk/Admin. Asst.	Second Class Borough 383-2699 FAX 383-3496
Municipality of Anchorage P.O. Box 196650 Anchorage, Alaska 99519-6650 Lejane Ferguson, Clerk	Unified Home Rule 343-4311 FAX 343-4780
Bristol Bay Borough P.O. Box 189 Naknek, Alaska 99633 Betty J. Bonin, Clerk/Financial Assistant	Second Class Borough 246-4224 FAX 246-6633
Denali Borough P.O. Box 480 Healy, Alaska 99743 Kristina M. Graham, Clerk/Treasurer	683-1330 683-1340
Fairbanks North Star Borough P.O. Box 71267 Fairbanks, Alaska 99707 Mona Lisa Drexler, CMC, Clerk Martha J. Harrell, CMC/AE, Deputy Clerk, AAMC Secretary	Second Class Borough 452-4761 FAX 452-3819
Haines Borough P.O. Box 1209 Haines, Alaska 99827 <del>Sharan Van Winkle, Clerk/Treasurer</del>	Third Class Borough 766-2711 FAX 766-2716
City & Borough of Juneau 155 South Seward Street Juneau, Alaska 99801 Patty Ann Polley, Clerk, AAMC Immediate Past President	Unified Home Rule 586-5278 FAX 586-5299
Kenai Peninsula Borough 144 North Binkley Street Soldotna, Alaska 99669 Gaye J. Vaughan, CMC/AE, Clerk Teresa Hudson, Deputy Clerk	Second Class Borough 262-4441 FAX 262-1892

Ketchikan Gateway Borough 344 Front Street Ketchikan, Alaska 99901 Georgianna C. Zimmerle, CMC/AAE, Clerk Susan L. Bethel, Deputy Clerk	Second Class Borough 228-6605 FAX 225-7282
Kodiak Island Borough 710 Mill Bay Road Kodiak, Alaska 99615-6340 Donna F. Smith, Clerk Judy Neilsen, Deputy Clerk	Second Class Borough 486-5736 FAX 486-2886
Lake & Peninsula Borough P.O. Box 495 King Salmon, Alaska 99613 Mary Anne Wilson, Clerk	Home Rule Borough 246-3421 FAX 246-6602
Matanuska-Susitna Borough P.O. Box 1608 Palmer, Alaska 99645 Linda Ann Dahl, CMC, Clerk Kristie L. Van Gorder, Deputy Clerk	Second Class Borough 745-9685 FAX 745-0886
Northwest Arctic Borough P.O. Box 1110 Kotzebue, Alaska 99752 Paulette Lambert, Clerk	First Class Borough 442-2500 FAX 442-2930
North Slope Borough P.O. Box 69 Barrow, Alaska Evelyn J. Donoyan, Clerk	Home Rule 852-2611 852-0229
City & Borough of Sitka 304 Lake Street, Room 111 Sitka, Alaska 99835 Melinda L. Jenkins, Clerk, AAMC Vice President	Unified Home Rule 747-3294 FAX 747-7403
City of Akutan General Delivery Akutan, Alaska 99553 Zenia Borenin, Clerk Ruth E. Kudrin, Deputy Clerk	Second Class City 698-2228 FAX 698-2202

City of Atkasuk  
General Delivery  
Atkasuk, Alaska 99791  
Harold L. Ivanoff, Administrator/Clerk

Second Class City  
633-6811  
FAX 633-6812

City of Barrow  
P.O. Box 629  
Barrow, Alaska 99723  
~~Ronald D. Brewer, Clerk~~

First Class City  
852-5211  
FAX 852-5871

City of Bethel  
P.O. Box 388  
Bethel, Alaska 99559  
Anna L. McGowan, Clerk

Second Class City  
543-2047  
FAX 543-4171

City of Craig  
P.O. Box 23  
Craig, Alaska 99921  
Helen Gray, CMC, Clerk

First Class City  
826-3275  
FAX 826-3278

City of Delta Junction  
P.O. Box 229  
Delta Junction, Alaska 99737  
Robby Lee Benson, Clerk/Treasurer/Administrative Assistant

Second Class City  
895-4656

City of Dillingham  
P.O. Box 889  
Dillingham, Alaska 99576  
Vivian M. Braswell, CMC, Clerk

First Class City  
842-5211  
FAX 842-5691

City of Eagle  
P.O. Box 1901  
Eagle, Alaska 99738  
Audrey J. Scott, Clerk

Second Class City  
547-2282 (Mondays  
only)

City of Elim  
P.O. Box 39009  
Elim, Alaska 99739  
Luther D. Nagaruk, Clerk

Second Class City  
890-3441  
FAX 890-3091

City of False Pass  
P.O. Box 50  
False Pass, Alaska 99583  
Joan Notti, Clerk

548-2319

City of Galena  
Antoski Hall P.O. Box 149  
Galena, Alaska 99741  
Miss Vaughn D. Dayton, Clerk

First Class City  
656-1769  
FAX 656-1769

City of Grayling  
P.O. Box 89  
Grayling, Alaska 99590  
Marilyn Deacon, Clerk

Second Class City  
453-5148

City of Haines  
P.O. Box 1049  
Haines, Alaska 99827  
Susan V. Johnston, Clerk

First Class City  
766-2231  
FAX 7866-3179

City of Homer  
491 East Pioneer Avenue  
Homer, Alaska 99603  
Mary L. Shannon, Clerk

First Class City  
235-8121  
FAX 235-3140

City of Hydaburg  
P.O. Box 49  
Hydaburg, Alaska 99922  
Margaret O'Neil, Clerk  
Mary A. Morris, Deputy Clerk

First Class City  
285-3761

City of Kaktovik  
P.O. Box 27  
Kaktovik, Alaska 99747  
Mary L. Sopl, Clerk/Treasurer

Second Class City  
640-6313  
FAX 640-6314

City of Kenai  
210 Fidalgo  
Kenai, Alaska 99611  
Carol L. Freas, Clerk  
Diane E. Craig, Deputy Clerk

Home Rule City  
283-7539  
FAX 283-3014

City of Ketchikan  
334 Front Street  
Ketchikan, Alaska 99901  
Karen Miles, CMC/AE, Clerk  
Karen Sund, CMC, Deputy Clerk

Home Rule City  
225-3111, Ext. 322  
FAX 225-5075

City of King Cove  
P.O. Box 37  
King Cove, Alaska 99612  
Cynthia Samuelson, CMC, Clerk/Treasurer  
Frankie C. Mack, Deputy Clerk

First Class City  
497-2340  
FAX 497-2386

City of Kivalina  
P.O. Box 50079  
Kivalina, Alaska 99750  
Myra Adams, Clerk

Second Class City  
645-2137  
FAX 645-2175

City of Kodiak  
P.O. Box 1397  
Kodiak, Alaska 99615  
Marcella H. Dalke, CMC/AAE, Clerk  
~~C. Marie Stevenson, Deputy Clerk~~

Home Rule City  
486-8636  
FAX 486-8600

City of Kotzebue  
P.O. Box 46  
Kotzebue, Alaska 99752  
Helen P. Baker, Clerk

Second Class City  
442-3401  
FAX 422-3742

City of Koyuk  
P.O. Box 29  
Koyuk, Alaska 99753  
Nancy Nassuk, Clerk

Second Class City  
963-3441  
FAX 963-3442

City of Mekoryuk  
P.O. Box 29  
Mekoryuk, Alaska 99630  
D. Janet Hendrickson, Clerk

Second Class City  
827-8314  
FAX 827-8626

City of Nenana  
P.O. Box 70  
Nenana, Alaska 99760  
Karen Harvey, Clerk/Treasurer/Assessor

First Class City  
832-5441  
FAX 832-5503

City of Nome  
P.O. Box 281  
Nome, Alaska 99762  
Linda E. Conley, Clerk/Treasurer, AAMC Treasurer

First Class City  
443-5242  
FAX 443-5349

City of North Pole  
P.O. Box 55109  
North Pole, Alaska 99705  
Shelley Dugan, CMC, Clerk/Treasurer

Home Rule City  
488-2281  
FAX 488-3002

City of Old Harbor  
P.O. Box 109  
Old Harbor, Alaska 99643  
Annie Pestrikoff, CMC, Clerk/Treasurer  
Tillie Christiansen, Deputy Clerk

Second Class City  
286-2204  
FAX 286-2278

City of Pelican  
P.O. Box 757  
Pelican, Alaska 99832  
Carol A. Bean, Clerk/Treasurer

First Class City  
735-2202  
FAX 735-2258

City of Petersburg  
P.O. Box 329  
Petersburg, Alaska 99833  
Patricia L. Curtiss, Clerk  
Frances A. Jones, Deputy Clerk

Home Rule City  
772-4519  
FAX 772-3759

City of Sand Point  
P.O. Box 249  
Sand Point, Alaska 99661  
Debra K. Dushkin, CMC, Clerk/Treasurer  
Gale D. McCarty, Deputy Clerk

First Class City  
383-2696  
FAX 383-2698

City of Savoonga  
P.O. Box 188  
Savoonga, Alaska 99769  
Tuesday M. Toolie, Clerk

Second Class City  
984-6614  
FAX 984-6411

City of Saxman  
Route 2, Box 1  
Saxman via Ketchikan, Alaska 99901  
Nora DeWitt, Clerk/Finance Officer

Second Class City  
225-4166  
FAX 225-4706

City of Selawik  
P.O. Box 49  
Selawik, Alaska 99770  
Myra J. Davis, Clerk

Second Class City  
484-2132  
484-2209

City of Seldovia  
P.O. Box 268  
Seldovia, Alaska 99663  
Roberta R. Hiatt, Clerk/Treasurer

First Class City  
234-7643  
FAX 234-7430

City of Seward  
P.O. Box 167  
Seward, Alaska 99664-0167  
Linda S. Murphy, CMC/AE, Clerk  
Patricia J. Jones, Deputy Clerk

Home Rule City  
224-3331  
FAX 224-3248

City of Soldotna 177 North Birch Street Soldotna, Alaska 99669 Patricia C. Burdick, CMC, Clerk	First Class City 262-9017 FAX 262-1245
City of St. Mary's P.O. Box 163 St. Mary's, Alaska 99658 Thelma A. Johnson, Clerk/Treasurer	First Class City 438-2515 FAX 438-2719
City of Thorne Bay P.O. Box 19110 Thorne Bay, Alaska 99919 Harriet J. Edwards, Clerk/Treasurer	Second Class City 828-3380 FAX 828-3374
City of Togiak P.O. Box 99 Togiak, Alaska 99678 Marie (Pavian) Paul, Clerk	Second Class City 493-5820 FAX 493-5932
City of Unalaska P.O. Box 89 Unalaska, Alaska 99685 Shelley Blickenstaff, Clerk	First Class City 581-1251 FAX 581-1417
City of Valdez P.O. Box 307 Valdez, Alaska 99686 Jeanne D. Donald, CMC, Clerk, AAMC President Sheri Lynn Buen, Deputy Clerk	Home Rule City 835-4313 FAX 835-2992
City of Wainwright P.O. Box 9 Wainwright, Alaska 99782 Isabel M. Nashookpuk, Clerk	Second Class City 763-2815
City of Wasilla 290 East Herning Avenue Wasilla, Alaska 99687 Erling P. Nelson, CMC, Clerk Marjorie D. Harris, CMC, Deputy Clerk	First Class City 373-9066 FAX 373-0788
City of Wrangell P.O. Box 531 Wrangell, Alaska 99929 Franette A. Vincent, Clerk	Home Rule 874-2381 FAX 874-3952

\* \* \* \* \*

ASSOCIATE MEMBERS

Hughes, Thorsness, Gantz, Powell & Brundin 263-8251  
William M. Walker, Esq. FAX 263-8320  
509 West 3rd Avenue  
Anchorage, Alaska 99501

Perkins Coie 279-8561  
Attn: JoAnne E. Yerkes, Legal Assistant FAX 276-3108  
1029 West Third Avenue, Suite 300  
Anchorage, Alaska 99501

March 15, 1991

**ALASKA ASSOCIATION OF MUNICIPAL CLERKS  
POLICY STATEMENT IN SUPPORT HOUSE BILL 128**

Since its inception in 1966, the Alaska Association of Municipal Clerks ("AAMC") has actively sought to heighten the professional development of its members. Professional development is a process for planned and continued learning and positive imaging.

The profession of municipal clerk extends to biblical times and beyond, and along with tax collector is the oldest of public officials. The Hebrew translation of town clerk literally means the city or town "reminder." The English Bible called the clerk the "recorder," who was "one who caused to remember" or "called to mind." When the early colonists came to America, they set up forms of local government to which they had been accustomed, and thus, the office of clerk was one of the first established. The office of the clerk has been preserved and may be found in virtually every unit of local government in the world.

The office of clerk provides many different and complex services. The role of the clerk can be and many times is, beyond the scope of the office's legal mandate because of the very nature of the job. Legally mandated responsibilities set the legal framework of the role of the clerk and in so doing allow this office to be a major source of information to all people in and out of government.

The image of the clerk's office bears on the perception that the public sees. In order to create a better image of the clerk's position, AAMC is undertaking a positive approach to sell . . . our skills, our caring, our self-esteem, our attitude and continuing education to create an image that is believable and trusted. Updating the "powers and duties of the municipal clerk" or the "legal mandates" of the clerk's office is one step in the process.

The municipal clerk plays a unique role in the balance of powers in local government. As municipal clerks, we believe the office of clerk is a valid and valuable asset to local government and we would like to convince you of the same.

The governing body/manager form of government as well as the strong mayor form of government is based on a philosophy of separation of powers that establishes separate legislative and administrative branches. The governing body is directly accountable to the citizens for translating needs and expectations into laws and policies. The manager/mayor and staff comprise the administrative branch of local government. The role of the municipal clerk appropriately becomes the link between the legislative and administrative branches. The clerk is responsible for the processes of bringing forth the administration's requests for legislative direction and for recording the governing body's policies and directions. Equally important is the municipal clerk's role in providing public access into the process. In Alaska the positions of both the municipal clerk and the municipal attorney may enjoy a distinctive status in the administrative branch of local government. This approach is taken to guard against abuse by any public official by providing a means of checks and balances. There

This language is the same as existing AS 29.29.380(2) with the addition of the words "and its boards and committees." This does not add or subtract in any significant way to what already exists.

Section 29.20.380 (2)

Custody of the municipal seal has historically rested with the municipal clerk. The clerk attests deeds and official documents for the municipality and affixes the seal. It is commonly true among the 78 members of AAMC and 7,000 members of IIMC (International Institute of Municipal Clerks) that the clerk has custody of the official municipal seal. This section merely establishes responsibility for the safe-keeping of the corporate seal with the corporate secretary. It does not restrict or hinder its legal use.

Section 29.20.380 (3)

This paragraph is a combination of existing AS 29.20.380(3) and (4). The intent of the language remains the same and yet it encourages a clerk to become well acquainted with public meeting and public information laws. Current language states "arrange publication of notices, . . ." which does not consider that public notice in today's technology expands beyond "publications." Public records are all covered by Alaska's public information law and yet in existing language there is no mention of such records as "magnetic tape or microfiche," for example.

Section 29.20.380 (4)

This is a new section. The records management program in a municipality is vital. Yet, there is often very little interest in developing and maintaining such a tedious program. We view this new language as assigning responsibility rather than usurping authority. Records management is a very common function of the municipal clerks offices around the world.

AS 40.21.070 prescribes for records management for local records and AS 40.21.080 provides for disposal of public records by a political subdivision. These sections leave "the authority" vested in the local governing body. This new section assigns the responsibility for the records management program to the clerk when the municipality has a clerk and it does not, in conflict with Title 40, place the program within the sole discretion of any official.

Title 40 also states that a municipal program will follow, as far as is practical, the program established for the management of state records. Implementation of such a program would generally be enacted by appropriate resolutions and ordinances adopted by the governing body.

# **CORRECTION**

**THIS DOCUMENT  
HAS BEEN REPHOTOGRAPHED  
TO ASSURE LEGIBILITY**

March 15, 1991

## ALASKA ASSOCIATION OF MUNICIPAL CLERKS POLICY STATEMENT IN SUPPORT HOUSE BILL 128

Since its inception in 1966, the Alaska Association of Municipal Clerks ("AAMC") has actively sought to heighten the professional development of its members. Professional development is a process for planned and continued learning and positive imaging.

The profession of municipal clerk extends to biblical times and beyond, and along with tax collector is the oldest of public officials. The Hebrew translation of town clerk literally means the city or town "reminder." The English Bible called the clerk the "recorder," who was "one who caused to remember" or "called to mind." When the early colonists came to America, they set up forms of local government to which they had been accustomed, and thus, the office of clerk was one of the first established. The office of the clerk has been preserved and may be found in virtually every unit of local government in the world.

The office of clerk provides many different and complex services. The role of the clerk can be and many times is, beyond the scope of the office's legal mandate because of the very nature of the job. Legally mandated responsibilities set the legal framework of the role of the clerk and in so doing allow this office to be a major source of information to all people in and out of government.

The image of the clerk's office bears on the perception that the public sees. In order to create a better image of the clerk's position, AAMC is undertaking a positive approach to sell . . . our skills, our caring, our self-esteem, our attitude and continuing education to create an image that is believable and trusted. Updating the "powers and duties of the municipal clerk" or the "legal mandates" of the clerk's office is one step in the process.

The municipal clerk plays a unique role in the balance of powers in local government. As municipal clerks, we believe the office of clerk is a valid and valuable asset to local government and we would like to convince you of the same.

The governing body/manager form of government as well as the strong mayor form of government is based on a philosophy of separation of powers that establishes separate legislative and administrative branches. The governing body is directly accountable to the citizens for translating needs and expectations into laws and policies. The manager/mayor and staff comprise the administrative branch of local government. The role of the municipal clerk appropriately becomes the link between the legislative and administrative branches. The clerk is responsible for the processes of bringing forth the administration's requests for legislative direction and for recording the governing body's policies and directions. Equally important is the municipal clerk's role in providing public access into the process. In Alaska the positions of both the municipal clerk and the municipal attorney may enjoy a distinctive status in the administrative branch of local government. This approach is taken to guard against abuse by any public official by providing a means of checks and balances. There

SUPPORT HB 128

March 15, 1991

Page 2

should be little doubt that clerks have a significant and critical part in government and their role should be protected and promoted accordingly.

House Bill 128 does two things. Please refer to your copy of HB 128. First, it requires a governing body to appoint a municipal clerk and removes previous ability to "provide otherwise by ordinance:" however, AS 29.20.380 is not a limitation of home rule powers - it does not apply to home rule municipalities.

*This change was not included in the first draft of the proposal presented to AAMC at its November 13, 1990 meeting. The municipal clerks representing thirty-seven (37) municipalities around the State (see attached list) discussed the addition of such a requirement and then voted unanimously to include it in our proposal. Our proposal was to require that every municipality have a clerk. The shifting of the section relating to treasurer or combining of offices was done by Legislative Affairs Agency - we don't know why.*

*It is our understanding that this change causes concern to some of the State's local government officials representing smaller communities and villages.*

*In defense of our position, consider the value of having the chief administrator, the attorney, and the clerk appointed by and directly responsible to the governing body. When each of these people is directly responsible to the governing body, the opportunity for oversight, neglect or misconduct in any of these positions is minimal. This provides a checks and balance system to the governing body. We have all heard the nightmares experienced by some of Alaska's villages and small communities which have had managers and/or administrators leave under less than desirable conditions because they were the sole source of administrative overview for that community.*

*However, this change was not AAMC's original goal with this legislation and we would gladly compromise by going back to the previously existing language in order to preserve the rest.*

Second, House Bill 128 updates the legal mandates of the municipal clerk. Once again, it does not apply to home rule municipalities. Title 29 is used as a guide as well as a legal mandate. The minor word changes from the former language as presented in the paragraphs of Section 3 of the bill are offered to enhance the reader's understanding of the duties and responsibilities and they are not intended to be insidious. The additions proposed are appropriate and are not designed to be anarchist.

Section 29.20.380 (1)

This language is the same as existing AS 29.29.380(2) with the addition of the words "and its boards and committees." This does not add or subtract in any significant way to what already exists.

Section 29.20.380 (2)

Custody of the municipal seal has historically rested with the municipal clerk. The clerk attests deeds and official documents for the municipality and affixes the seal. It is commonly true among the 78 members of AAMC and 7,000 members of IIMC (International Institute of Municipal Clerks) that the clerk has custody of the official municipal seal. This section merely establishes responsibility for the safe-keeping of the corporate seal with the corporate secretary. It does not restrict or hinder its legal use.

Section 29.20.380 (3)

This paragraph is a combination of existing AS 29.20.380(3) and (4). The intent of the language remains the same and yet it encourages a clerk to become well acquainted with public meeting and public information laws. Current language states "arrange publication of notices, . . ." which does not consider that public notice in today's technology expands beyond "publications." Public records are all covered by Alaska's public information law and yet in existing language there is no mention of such records as "magnetic tape or microfiche," for example.

Section 29.20.380 (4)

This is a new section. The records management program in a municipality is vital. Yet, there is often very little interest in developing and maintaining such a tedious program. We view this new language as assigning responsibility rather than usurping authority. Records management is a very common function of the municipal clerks offices around the world.

AS 40.21.070 prescribes for records management for local records and AS 40.21.080 provides for disposal of public records by a political subdivision. These sections leave "the authority" vested in the local governing body. This new section assigns the responsibility for the records management program to the clerk when the municipality has a clerk and it does not, in conflict with Title 40, place the program within the sole discretion of any official.

Title 40 also states that a municipal program will follow, as far as is practical, the program established for the management of state records. Implementation of such a program would generally be enacted by appropriate resolutions and ordinances adopted by the governing body.

SUPPORT HB 128

March 15, 1991

Page 4

Section 29.20.380 (6)

This is new language. Once again preparation of the agenda and back up material packets is commonly done by the clerk's office in a majority of the country's municipalities. Once again it is more of an assignment of responsibility for a typical duty which takes up a good amount of the clerk's time.

Section 29.20.380 (7)

Election administration is a major function of the clerk's office. Municipal clerks spend many hours in training and research to maintain expertise in this field. Of all the "traditional" or common functions of the clerk's office, this one is perhaps the most deeply rooted. Title 29 refers to the municipal clerk in sections dealing with election contest and appeal, and petition requirements under the Elections chapter. Title 15, Elections, directs the municipal clerk to provide voter information from the municipality. It is logical to add this new section.

AAMC suggested the following language for this section: "administer all municipal elections and perform related duties;" The language was changed by Legislative Affairs Agency. AAMC suggested language is short and to the point. "Perform related duties" refers to the many election duties municipal clerk's assume for the State of Alaska such as voter registration, precinct worker training, distributing and accepting absentee ballot requests, etc.

AAMC prefers the original suggested language together with the addition of a new paragraph which was also deleted by Legislative Affairs Agency: "assure that the municipality complies with Section 5 of the Federal Voting Rights Act;"

The State of Alaska and all of its local governments are required to preclear all changes effecting voting before enforcing those changes. It may appear on the surface that such a consideration could be covered under the proposed language "assure that federal and state election laws are complied with," and that may be true. The act, however, also covers changes that have the potential to affect voting and/or the election process such as annexations, detachments, incorporation, dissolutions, and procedural changes.

The State Division of Elections approached AAMC several years ago to conduct training on compliance with this act and to encourage all municipalities to comply. Not only does a municipality face serious and expensive legal action for non-compliance, but also the State cannot "bail out" until it and all its local governments have complied with the requirements of the Voting Rights Act for 10 years.

SUPPORT HB 128  
March 15, 1991  
Page 5

AAMC supports inclusion of this new paragraph. It will serve as a cross reference and reminder to municipalities about something that is already required. It assigns responsibility to make sure it gets done.

Section 29.20.380 (8)

This is a cross reference of AS 09.63.010 which gives the authority.

Section 29.20.380 (9)

This is a new section. First, use of the terminology "parliamentary advisor" is by design. Municipal clerks are trained in rudimentary rules of procedure merely through contact with many, many public meetings. As part of our professional development process, we would like to encourage municipal clerks to become skilled in parliamentary rules and practice. We do not see it as unreasonable to require a clerk to acquire enough skill to offer assistance and advice to any member of the local governing body, including the mayor or presiding officer, who wants to know how to proceed in a formal meeting.

The intent was not to restrict the presiding officer or mayor in selection of a parliamentarian. We do not feel it does. By encouraging the development of this skill in the clerk's office, the mayor or presiding officer may have a registered Parliamentarian to call on at some future date.

Section 29.30.380 (10)

This is the same as current AS 29.20.380(6). If the change is made to Section 1 and 2 as noted above, add "or prescribed by the chief administrator or" by the governing body.

The role of the professional clerk has been and is now characterized by at least four descriptive words: ambiguity. . . conflict. . . strain. . . neglect. Despite this, surveys have shown that clerks are even tempered, unflappable, healthy individuals who manage to keep from taking either themselves or others too seriously. Our goal is obviously to enhance the importance of the clerk's position. Our dedication is to serve the best interests of all people whatever that may require. Our process is to clarify the legal mandates which give us our goals to achieve. We urge your support of House Bill 128.

Respectfully submitted,  
Jeanne Donald, CMC  
President, AAMC

ATTACHMENT  
CLERKS IN ATTENDANCE:

AAMC MINUTES ANNUAL MEETING  
NOVEMBER 13, 1990

Beans	Thelma		Clerk	City of Mary's
Bonin	Betty	J.	Clerk	Bristol Bay Borough
Braswell	Vivan		Clerk	City of Dillingham
Brower	Ronald	D.	Clerk	City of Barrow
Burdick	Patricia	C.	Clerk	Soldotna
Conley	Linda	E.	Clerk	City of Nome
Curtiss	Patty		Clerk	City of Petersburg
Dahl	Linda		Clerk	Matanuska-Susitna Borough
Dalke	Marcella		Clerk	Kodiak
Deacon	Marilyn		Clerk	City of Grayling
Donald	Jeanne		Clerk	City of Valdez
Drexler	Mona Lisa		Clerk	Fairbank North Star Borough
Dushkin	Debra	K.	Clerk	Sand Point
Freas	Carol	L.	Clerk	City of Kenai
Gray	Helen		Clerk	Craig
Harrell	Martha		Deputy	Fairbanks North Star Borough
Harris	Majorie	D.	Clerk	City of Wasilla
Hill	Trudy		Clerk	Whittier, CA
Jenkins	Melinda		Clerk	Sitka
Johnson	Sophie	M.	Clerk	Northwest Artic Borough
Karasti	Alice	L.	Clerk	City of Ekwok
Maillelle	Martha		Clerk	Grayling
Miles	Karen		Clerk	City of Ketchikan
Murphy	Linda		Clerk	Seward
Painter	Eleanor		Treasurer	Grayling
Paul	Marie		Clerk	City of Togiak
Plant	Lynda		Clerk	Cordova
Polley	Patty Ann		Clerk	City & Borough of Juneau
Samuelson	Frankie		Clerk	City of King Cove
Shannon	Mary	L.	Clerk	City of Homer
Smith	Donna	F.	Clerk	Kodiak Island Borough
Stevenson	Marie		Clerk	Kodiak
Sumey	Janet		Clerk	Kenai Penninsula Borough
Ushijima	Jean		Clerk	Beverly Hills, CA
VanGorder	Kristie		Deputy	Matanuska-Susitna Borough
Vaughan	Gaye		Clerk	Kodiak Island Borough
Vincent	Franette		Clerk	Wrangell
Wildes	Diane		Clerk	Aleutians East Borough
Zimmerle	Georgianna		Clerk	Ketchikan Gateway Borough

A total of 39 AAMC Clerks were present.

# OLD BOROUGH TITLE 7

## SEPTEMBER 1970

§ 07.20.050

ALASKA STATUTES

§ 07.20.070

**Sec. 07.20.050. Qualifications.** A person is eligible to be a member of the assembly if he is a qualified voter of the borough. Additional residency requirements not to exceed three years may be prescribed by ordinance for members of the assembly elected from the area outside first class cities. If a member of the assembly ceases to be a qualified voter of the borough, he shall immediately forfeit his office. If a member elected from the area outside first class cities becomes a resident of a first class city or becomes a resident of a borough election section in the area outside first class cities other than the section from which he was elected, he shall immediately forfeit his office, except that the assembly may by general ordinance provide otherwise, but in no event may a member serve beyond the next general election. (§ 4.05 ch 146 SLA 1961; am § 1 ch 70 SLA 1967)

**Effect of amendment.** — The 1967 amendment added the second sentence, inserted "of the assembly" near the beginning of the third sentence, and deleted "he may continue to serve only until the next regular election," formerly appearing at the end of the last sentence, adding in lieu thereof all of the language beginning "or becomes a resident."

**Sec. 07.20.060. Organization.** (a) The assembly shall elect from among its members a presiding officer and a deputy presiding officer, each of whom shall serve at its pleasure. The presiding officer shall preside at assembly meetings. If at any meeting the presiding officer is not present or is unable to act, the deputy presiding officer shall preside.

(b) The assembly shall elect a clerk or appoint the chairman or another administrative officer to serve as the clerk. Under the supervision of the assembly, the clerk shall

(1) give due notice of the time and place of assembly meetings, to assembly members and to the public;

(2) keep the journal of the assembly proceedings;

(3) procure for the assembly any required publication of notices, ordinances, resolutions, and so forth;

(4) maintain and make available for public inspection an indexed file containing copies of the borough code, every adopted ordinance, resolution, rule, regulation, and code of regulations;

(5) perform the duties assigned him by any of the provisions of this title; and

(6) perform such other duties as the assembly may prescribe. (§ 4.06 ch 146 SLA 1961)

**Sec. 07.20.070. Procedure.** (a) The assembly shall meet regularly at least once every three months at the times and places prescribed by the assembly. Special meetings may be held on the call of the borough chairman, the presiding officer, or of one-fourth or more members, and whenever practicable, upon no less than 24 hours' effective notice to each member.

# TITLE 29 OCTOBER 1972

§ 29.23.360

MUNICIPAL GOVERNMENT

§ 29.23.380

municipal corporations owning or operating waterworks, 10 ALR 1432; 18 ALR 946.

Constitutionality of statute or ordinance for protection of water supply, 72 ALR 673.

Power of municipal corporation to sell equipment to consumers as adjunct to utility service furnished, 108 ALR 1454.

62 C.J.S. Municipal Corporations § 699.

## Article 7. Other Officers and Employees.

### Section

360. Appointment of officers  
370. Municipal attorney  
380. Municipal clerk  
390. Municipal treasurer  
395. Intent of §§ 397-401

### Section

397. Commission  
399. Interns  
401. Appointment to municipal boards and commissions

**Sec. 29.23.360. Appointment of officers.** The municipal clerk, attorney, treasurer, and police chief are appointed by the chief administrator or by the assembly or council, as determined by ordinance. Officers serve at the pleasure of the appointing authority, subject to ordinance. Appointments by the chief administrator are subject to confirmation by the governing body. (§ 2 ch 118 SLA 1972)

**Sec. 29.23.370. Municipal attorney.** The municipal attorney is the legal advisor of the council or assembly, the school board, and the other officers of the municipality. He represents the municipality as attorney in civil and criminal proceedings. The school board has the right to hire independent counsel when in its judgment independent counsel is needed. (§ 2 ch 118 SLA 1972)

ALR and C.J.S. references. — Attorney's authority to compromise suit for municipality, 66 ALR 119; 30 ALR2d 944.

Attorney's compensation for services in matters involving municipalities, 143 ALR 829; 56 ALR2d 13.

62 C.J.S. Municipal Corporations § 695.

**Sec. 29.23.380. Municipal clerk.** (a) The municipal clerk shall

(1) give notice of the time and place of meetings to the assembly or the council and to the public;

(2) attend meetings and keep the journal;

(3) arrange publication of notices, ordinances, and resolutions;

(4) maintain and make available for public inspection an indexed file including the municipal ordinances, resolutions, rules, regulations, and codes;

(5) attest deeds and other documents;

(6) perform other duties specified in this title or prescribed by the chief executive or by the governing body.

(b) The assembly or council may combine the office of clerk with that of treasurer. If the offices are combined, the clerk shall, as required of the treasurer, give his bond to the municipality for the

§ 29.23.390

ALASKA STATUTES

§ 29.23.397

faithful performance of his duties as clerk-treasurer. (§ 2 ch 118 SLA 1972)

No liability for unintentional error in performing discretionary duty. — When a public officer is charged with duties which call for an exercise of his judgment and discretion, he is not liable for an erroneous per-

of willful, wrong, malice, or corruption. *Churchhill v. McKay*, 17 Alaska 633, 163 F. Supp. 339 (D. Alaska 1958).

C.J.S. reference.—62 C.J.S. Municipal Corporations § 699.

TITLE 29  
OCTOBER 1984

§ 29.23.370

ALASKA STATUTES

§ 29.23.390

Collateral references. — 56 Am. Jur. Other Political Subdivisions, §§ 231 to 2d, Municipal Corporations, Counties, and 336.

**Sec. 29.23.370. Municipal attorney.** The municipal attorney is the legal advisor of the council or assembly, the school board, and the other officers of the municipality. The municipal attorney represents the municipality as attorney in civil and criminal proceedings. The school board has the right to hire independent counsel when in its judgment independent counsel is needed. (§ 2 ch 118 SLA 1972)

Collateral references. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 282.

62 C.J.S., Municipal Corporations, § 695.

Attorney's authority to compromise suit

for municipality, 66 ALR 119; 30 ALR2d 944.

Attorney's compensation for services in matters involving municipalities, 143 ALR 829; 56 ALR2d 13.

**Sec. 29.23.380. Municipal clerk.** (a) The municipal clerk shall  
(1) give notice of the time and place of meetings to the assembly or the council and to the public;

(2) attend meetings and keep the journal;

(3) arrange publication of notices, ordinances, and resolutions;

(4) maintain and make available for public inspection an indexed file including the municipal ordinances, resolutions, rules, regulations, and codes;

(5) attest deeds and other documents;

(6) perform other duties specified in this title or prescribed by the chief executive or by the governing body.

(b) The assembly or council may combine the office of clerk with that of treasurer. If the offices are combined, the clerk shall, as required of the treasurer, give a bond to the municipality for the faithful performance of the duties as clerk-treasurer. (§ 2 ch 118 SLA 1972)

NOTES TO DECISIONS

No liability for unintentional error in performing discretionary duty. — When a public officer was charged with duties which called for an exercise of his judgment and discretion, he was not liable for an erroneous performance under a

former, similar provision, unless he had been guilty of willful, wrong, malice, or corruption. *Churchhill v. McKay*, 17 Alaska 633, 163 F. Supp. 339 (D. Alaska 1958).

Collateral references. — 62 C.J.S., Municipal Corporations, § 699.

**Sec. 29.23.390. Municipal treasurer.** (a) The treasurer is the custodian of all municipal funds. The treasurer shall keep an itemized

# TITLE 29

# SEPTEMBER 1986

§ 29.20.380

MUNICIPAL GOVERNMENT

§ 29.20.390

Collateral references. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 282.

62 C.J.S., Municipal Corporations, § 695.

Attorney's authority to compromise suit

for municipality. 66 ALR 119; 30 ALR2d 944.

Attorney's compensation for services in matters involving municipalities. 143 ALR 829; 56 ALR2d 13.

**Sec. 29.20.380. Municipal clerk.** (a) The municipal clerk shall

- (1) give notice of the time and place of meetings of the governing body to the governing body and to the public;
- (2) attend meetings of the governing body and keep the journal;
- (3) arrange publication of notices, ordinances, and resolutions;
- (4) maintain and make available for public inspection an indexed file containing municipal ordinances, resolutions, rules, regulations, and codes;
- (5) attest deeds and other documents;
- (6) perform other duties specified in this title or prescribed by the chief administrator or by the governing body.

(b) The governing body may combine the office of clerk with that of treasurer. If the offices are combined, the clerk-treasurer shall, as required of the treasurer, give bond to the municipality for the faithful performance of the duties as clerk-treasurer. (§ 7 ch 74 SLA 1985)

## NOTES TO DECISIONS

No liability for unintentional error in performing discretionary duty. — When a public officer was charged with duties which called for an exercise of his judgment and discretion, he was not liable

for an erroneous performance under a former, similar provision, unless he had been guilty of willful wrong, malice, or corruption. *Churchhill v. McKay*, 17 Alaska 633, 163 F. Supp. 339 (D. Alaska 1958).

Collateral references. — 62 C.J.S., Municipal Corporations, § 699.

**Sec. 29.20.390. Municipal treasurer.** (a) Except as provided in AS 14.14.060, the treasurer is the custodian of all municipal funds. The treasurer shall keep an itemized account of money received and disbursed. The treasurer shall pay money on vouchers drawn against appropriations.

(b) The treasurer shall give bond to the municipality in a sum that the governing body directs. (§ 7 ch 74 SLA 1985)

Collateral references. — 62 C.J.S., Municipal Corporations, §§ 697, 1880.

April 3, 1991

The Honorable Cheri Davis  
House of Representatives  
P.O. Box V  
Juneau, AK 99811

Dear Representative Davis:

**SUPPORT OF HOUSE BILL 128 RELATING TO THE OFFICES OF MUNICIPAL  
CLERK AND CLERK-TREASURER**

It has come to my attention that House Bill 128 introduced by you with support from several of your colleagues is perhaps being questioned as a responsible bill.

I wish to add my unequivocal support to the concept of HB 128. Having served as Ketchikan Gateway Borough Mayor (1975 - 1984), I know for certain clerks are the backbone of every municipal government. It is they who bring continuity to municipal governments wherein a portion of its board of directors change at each annual election.

In a strong management form of government such as we have in the Ketchikan Gateway Borough, clerks preserve the continuity as managers change. During my tenure as mayor, the Ketchikan Gateway Borough had four managers. Only one of those really knew, understood, and could hit the ground running in relation to Title 29. The rest who were "manager capable" by job experience had to start from "left of scratch" to become knowledgeable about Title 29. It was the clerk who held municipality together.

I urge passage of House Bill 128.

Sincerely,



Carroll G. Fader  
Formerly KGB Mayor 1975-1984

cc Co-sponsors of HB 128

March 20, 1991

Greetings:

My name is C. Thomas Beck and I would like to speak in favor of House Bill 128. I served on the Thorne Bay City Council for three years and of that time about half was spent as mayor. The first five years of Thorne Bay's history was spent for the most part in a turmoil having to deal with a constant turnover in administrators.

The city clerk provided stability and continuity for our City during those difficult times. This would not have been so if the local governments' "Bible"--Title 29, hadn't been in place to give guidance and a general job description. We also spent many hours on the telephone talking to Community and Regional Affairs and they were very helpful. For small communities and those who are trying to keep their legal costs down these sorts of guidelines are essential.

With the passage of House Bill 128 a firm but flexible job description will be in place to assure city business is completed with a continuity necessary to keep a city moving in the right direction. As a former elected official I can see the real benefit of this legislation to new and small municipalities and urge your support of House Bill 128.

Thank you very much for taking time to listen to a former elected official who has experienced much.

C. Thomas Beck  
Former Mayor

PRESTON  
THORGRIMSON  
SHIDLER  
GATES & ELLIS

ATTORNEYS AT LAW

FOR YOUR INFORMATION

3-18-91

SUITE 400  
420 L STREET  
ANCHORAGE, AK 99501-1937  
TELEPHONE: (907) 276-1969  
FACSIMILE: (907) 276-1365

Received

FEB 19 1991

AML

February 15, 1991

Scott Burgess, Executive Director  
Alaska Municipal League  
217 Second Street, Suite 200  
Juneau, AK 99801

Re: HB 128 (Appointment and Duties of Clerk and  
Clerk/Treasurer)

Dear Scott:

The following comments are my own as adviser to the AML Legislative Committee. They do not reflect the position of the firm nor are they made on behalf of any client of the firm.

The subject bill has three major effects. First, it provides that the municipal clerk is appointed only by the governing body and does not even permit the governing body to authorize appointment of the clerk by the chief administrative officer. Currently, the municipal clerk is appointed by the chief administrator and confirmed by the governing body unless provided otherwise by ordinance. This permits the governing body to take control of the appointment of the municipal clerk if it so desires. Considering the League policy that local government should be free to decide how it wants to order its affairs, this bill would constitute a clear incursion on that flexibility. Under current law, if the governing body wants to take control of the appointment of the clerk it may do so. This legislation is not needed to give the governing body the authority to appoint the clerk.

The second effect is to add a subsection (b) to AS 29.20.360 authorizing the governing body to combine the offices of clerk and clerk/treasurer and providing for the appointment of the clerk-treasurer only by the governing body. The comments in the preceding paragraph apply here as well. Additionally, the authority to combine the office of clerk and treasurer already exists in AS 29.20.380(b). The effect of sections 2 and 3 of the bill is to move this specific authority to combine the offices from sections 380 to section 360. Thus, unless the municipalities want to restrict their options as to who is to act as appointing authority for the clerk or clerk-treasurer, sections 1 and 2 of this bill appear to be unnecessary.